10

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1912.

No. [redacted] 84.

EDWIN M. KEATLEY, AS RECEIVER OF AMERICAN GUARANTY COMPANY OF CHICAGO, UNDER APPOINTMENT OF THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA, APPELLANT,

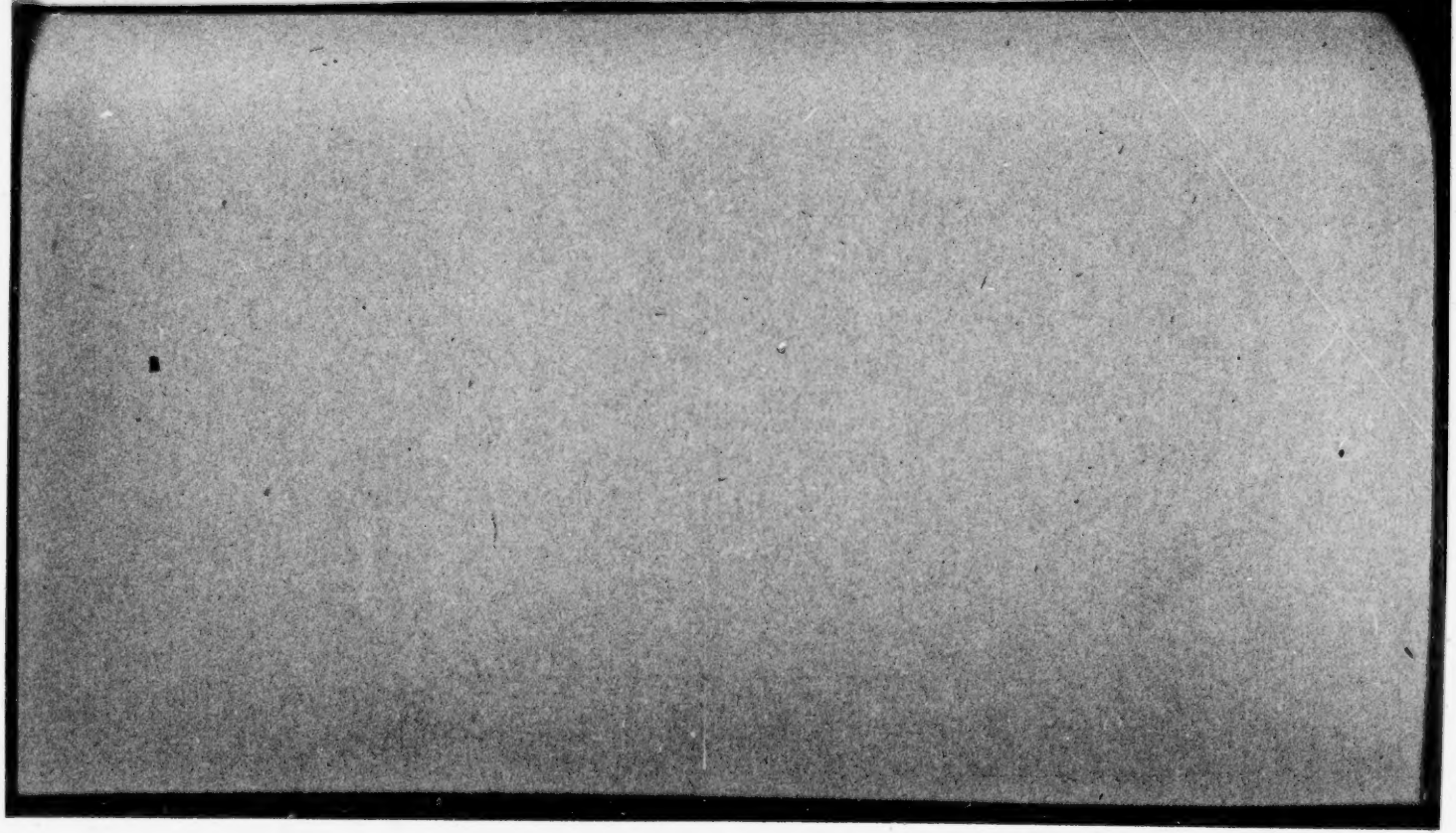
vs.

CARRIE REBECCA FUREY, AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF CHARLES LA TOUR FUREY, DECEASED, AND ALSO IN HER OWN RIGHT; EDWIN A. POTTER, AS RECEIVER OF THE AMERICAN GUARANTY COMPANY OF CHICAGO, BY APPOINTMENT OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 21, 1910.

(22,233.)



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OCTOBER TERM, 1910.

No. 612.

EDWIN M. KEATLEY, AS RECEIVER OF AMERICAN GUARANTY COMPANY OF CHICAGO, UNDER APPOINTMENT OF THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA, APPELLANT,

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

In Chancery. 29336.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased and also in Her Own Right, and Caroline La Tour Furey, Complainants.

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

In the Matter of the Intervening Petition of EDWIN M. KEATLEY.

Messrs. Steere, Williams & Steere, Solicitors for Complainants.
Messrs. Mayer, Meyer & Austrain, Solicitors for Receiver.
Messrs. Gorham & Wales, Solicitors for Defendant and Certain Intervening Petitioners.
Messrs. Chilton, MacCorkle & Chilton, Mr. Thos. H. Gill, Mr. F. W. Houghton, Mr. Geo. B. Edgerton, Solicitors for Edwin M. Keatley, Petitioner.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in Chancery sitting, at the United States Court room, in the City of Chicago, in said District and Division, before the Hon. Christian C. Kohlsaat, Circuit Judge of the United States for the Seventh Judicial Circuit, on Monday, the Seventh Day of February, in the year of our Lord, one thousand nine hundred and ten, being one of the days of the regular December term of said Court, begun Monday, the twentieth day of December, 1909, and of our Independence the one hundred and thirty-fourth year.

JOHN H. R. JAMAR, *Clerk*.

3 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey.

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO.

Be it remembered, That on this day to-wit: the Second day of February, 1909, come the complainants in the above entitled cause by their solicitors and filed in the Clerk's office of said Court, a certain Bill of Complaint in words and figures following to-wit:

4 *Bill of Complaint.*

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased and also in Her Own Right and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof:

Carrie Rebecca Furey, as executrix of the last Will and Testament of Charles La Tour Furey, deceased, and also in her own right, and Caroline La Tour Furey, complainants, bring this, their bill of complaint against the American Guaranty Company of Chicago, hereinafter called the Guaranty Company, defendant, and thereupon your orators complain and say:

1. That said Charles La Tour Furey departed this life on or about November 29th, 1908, in the City of Chicago, County of Cook and State of Illinois; that at the time of his death and for many years continuously theretofore, he was a citizen of said State of Illinois and a resident of said city; that said Carrie Rebecca Furey is the widow, and said Caroline La Tour Furey is the daughter of said Charles La Tour Furey, deceased; that at the time of the death of said Charles La Tour Furey, and for many years con-
5 tinuously theretofore and continuously since, your orators were, have been and now are citizens of said State of Illinois, and residents of said city of Chicago; that said American Guaranty Company of Chicago, is a corporation duly organized and doing business under and by virtue of the laws of the State of West Virginia, and is not incorporated under the laws of any other state, territory or country; that it is a citizen of the State of West Virginia and of no other state, territory or country; that it has heretofore duly complied with the laws of the State of Illinois governing foreign corporations and is duly licensed and authorized to do business in said State; that the matters in dispute in this cause exceed, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000).

2. That said Charles La Tour Furey left a last will and testament, which was duly admitted to probate in the Probate Court of said Cook County, Illinois, on December 8, 1908; that on said date letters testamentary duly issued out of said Probate Court to said Carrie Rebecca Furey, as executrix of said last will and testament, and on said date she duly qualified as such executrix and since said date has continued to and still is acting as such executrix; that

said letters testamentary are still in full force and effect, unrevoked and unappealed from; that in and by said last will and testament, one James L. Bigelow was named as an executor thereof, but that prior to said December 8, 1908, said Bigelow, in writing duly filed in said Probate Court, duly renounced his said appointment and refused to act as such executor; that a true and correct copy of said last will and testament is hereto attached, marked Exhibit "A" and by express reference thereto made a part hereof.

3. That in and by said last will and testament, said Charles La Tour Furey, deceased, devised to his widow, said Carrie Rebecca Furey, and to his daughter, said Caroline La Tour Furey, all
6 of his real estate and personal property of every description of said decedent, to have and to hold the same, share and share alike, absolutely in their own right; that his said widow and his said daughter, who is now of the age of nineteen years, were and are the sole and only heirs at law of said decedent.

4. That at the time of his death said Charles La Tour Furey was the absolute owner of 602 shares of the capital stock, of the par value of one hundred dollars ($100) each, of said Guaranty Company, and that the absolute title to said 602 shares of stock is now in your orator, Carrie Rebecca Furey, as executrix, as aforesaid, solely for the benefit of herself and her said daughter, Caroline La Tour Furey, and said Carrie Rebecca Furey, as executrix as aforesaid, now has in her possession all of the stock certificates representing said 602 shares of the capital stock, which certificates were duly issued by said Guaranty Company to said decedent long prior to his death; that said 602 shares of stock are fully paid up and non-assessible and are worth, to-wit: over sixty-two thousand dollars ($62,000).

5. That on or about March 10, 1906, said Guaranty Company duly entered into a contract with said Charles La Tour Furey, under and by the terms of which said Guaranty Company agreed to pay him certain commissions as compensation for services to be rendered by him to said Guaranty Company, which services were by him duly rendered and performed; that under and by the terms of said contract said Guaranty Company became and now is indebted to said Carrie Rebecca Furey, as executrix as aforesaid, in the sum of $14,798.42, which sum is now due and owing by said Guaranty Company to said executrix as such, for such services.

7 6. That said Guaranty Company was duly incorporated by a certificate of incorporation, issued under the laws of West Virginia, on July 18, 1892, under the name of The American Investment Guaranty Company, with an authorized capital stock of $200,000., and with authority to increase the same to $1,000,000; that thereafter, on or about January 12, 1898, the name of said company was duly changed from that of The American Investment Guaranty Company to the American Guaranty Company of Chicago; that on April 13, 1901, the authorized capital stock of said Guaranty Company was duly reduced from 10,000 shares, of the par value of $100., to 5,000 shares of the par value of $100. each, and that since April 13, 1901, the authorized capital stock of said company

has been $500,000; that said Guaranty Company was duly incorporated for a period expiring July 1, 1942, and one of the objects for which it was and is incorporated is to enter into contracts with individuals, firms and corporations, which are known as investment, service and income contracts, hereinafter more particularly referred to; that the principal office of said Guaranty Company, ever since its incorporation has been and is in the city of Charleston, in Kanawha County, in the State of West Virginia; that its administrative offices have been and now are in said City of Chicago; that a true and correct copy of said certificate of incorporation and of all amendments thereto is hereto attached, marked Exhibit "B" and by express reference thereto made part hereof.

7. That in the conduct of its said business said Guaranty Company has issued a large amount of said investment, service and income contracts; that it now has outstanding, in full force and effect, contracts of a total nominal or possible contingent value aggregating in amount, to-wit: $15,825,000., divided into, to-wit: $3,254,
8 000. of investment and service contracts and, to-wit: $12,571,000. income contracts; that said contracts respectively, vary from a minimum principal of $1,000. to a maximum principal of $10,000. upon the date of their maturity; that said contracts mature at periods of ten, fifteen and twenty years from their dates of issue; that the total cash or surrender value of all of said contracts is many millions of dollars less than their said nominal or contingent value; that there are to-wit: 6500 of said contracts now out-standing held by persons who live in various parts of the United States, Canada, and Mexico; that all of said contracts provided by their terms that the holders thereof shall pay to said Guaranty Company specified amounts in periodical installments, payable monthly, quarterly, semi-annually or annually, and further provide that default in making any of said periodical payments during the first two years of the life of said contracts shall result in a forfeiture thereof, and that after the lapse of said two years said contracts shall become non-forfeitable, but that defaults made subsequent to said two years shall result in either an exchange of the contract for one that is paid up, or a surrender thereof for a specified cash surrender value; that there are attached hereto specimen copies of said investment, service and income contracts, as Exhibits "C", "D" and "E" and which by express reference thereto are made part hereof.

8. That said investment and service contracts provide by their terms that as security for the redemption of the same, said Guaranty Company shall have and keep in trust, moneys and other securities to such an amount as shall at the time equal in the aggregate seventy-five per cent. of the cash value of said contracts, as shown by the schedules appended thereto, and that said income contracts, issued prior to 1906, contained similar terms, and said income contracts issued in 1906 and since, provide that the money
9 and other securities so — be kept in trust shall be in an amount equal to the cash loan value specified in said income contracts, less the amount of any unpaid loans thereon; that pursuant

to the provisions so contained in said contracts, said Guaranty Company did deposit and now has on deposit with the Royal Trust Company of Chicago, a corporation duly organized and doing business under and by virtue of the laws of Illinois, a fund consisting of cash and other securities aggregating over $550,000.; that in addition to said fund said Guaranty Company has assets, consisting of cash, securities, bills receivable, loans to contract-holders and other assets that your orators estimate to be worth over $750,000.

9. That though the total authorized capital stock of said Guaranty Company is now $500,000, there was at the time of the death of said Charles La Tour Furey, and there now are issued and outstanding only 962 shares of said stock, of the par value of $100. each; that of said 962 shares, 602 shares belong, as aforesaid, to and are the property of your orators, as hereinbefore stated; that the remaining 360 shares belong, 260 thereof to Lewis W. Pitcher, and the other 100 shares to James L. Biglow, respectively, who now and for many years continuously last past have been Secretary and Treasurer of said Guaranty Company; that the said 260 shares so belonging to said Pitcher are now, and since March 28, 1906, have continuously been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Pitcher to said Guaranty Company, contracted prior to the date last aforesaid; that the said 100 shares belonging to said Biglow now are and continuously since March 24, 1905, have been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Biglow to said Guaranty Company, con-
10 tracted prior to the date last aforesaid.

10. That on or about January 11, 1899, said Charles La Tour Furey first became connected with said Guaranty Company, and on or about said date was elected Vice-president of said Guaranty Company, and so continued up to the time of his death, and during all of said time had the active management and control of the business of said Guaranty Company; that on June 23, 1903, at a meeting of the board of directors of said Guaranty Company, the following resolution was duly and unanimously adopted.

"Resolved, the Vice-president, by virtue of his office is hereby constituted Chairman of the Board of Directors and is to assume and perform all the duties of the President it being also understood that the Vice-president shall take upon himself the duty of generally supervising all details and operation of the business."

That pursuant to said resolution, and in compliance therewith, said Charles La Tour Furey, as such Vice-president, did continuously since June 23, 1903, until the time of his death, act as Chairman of the Board of Directors of said Guaranty Company and assumed and performed all the duties of the President thereof, and took upon himself the duty of generally supervising all details and the operation of the business of said Guaranty Company; that said Charles La Tour Furey possessed great expert knowledge and ability in the kind of business in which said Guaranty Company was engaged as aforesaid, and by reason thereof he was put and continued in the practical control and management of said business, and was in such

control at the time of his death: that when he first became such vice-president of said Company, the total outstanding contracts of said Guaranty Company was about $3,000,000., while at the time of his death the same aggregated about $15,825,000.; that such increase was due to his said expert knowledge and ability; that your orators and said Guaranty Company and its officers and directors, have been unable to secure or agree upon a successor to said decedent; that your orators never had any business experience of any kind and that neither of them has the ability, qualification or willingness to conduct said business and neither one is willing to consent that the same shall be further conducted and carried on; that your orators and said Pitcher and Biglow, together owning all of the issued capital stock of said Guaranty Company, as aforesaid, have concluded that it is to the best interests of said Company, and all of its contract-holders and stockholders, that said Company shall be dissolved and its business and affairs wound up, and its assets liquidated and distributed in accordance with the rights of those entitled thereto, that other than its obligations on said contracts, said Guaranty Company has no liabilities whatever except to a nominal amount for current expenses, and except that owing Carrie Rebecca Furey, as executrix as aforesaid, and to one or more agents for possible commissions; that said Guaranty Company has no liabliities of any kind in the State of West Virginia other than to forty-eight contract-holders, none of whose contracts has matured and upon none of which is said Guaranty Company in any way in default, and the total surrender or cash value of which does not exceed $9,751.44; that all of the property and effects of said Guaranty Company are in said City of Chicago, except a few cash balances in little more than nominal amounts due to said Guaranty Company from banks outside of Chicago, which have been the collecting agents of said Guaranty Company.

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11. That on February 1, 1909, in accordance with the statutes of the State of West Virginia authorizing the same, a bill in chancery was filed in the Circuit Court of Kanawha County, West Virginia, in which the principal office or place of business of said Guaranty Company is situated, praying that the court decree a dissolution of said Guaranty Company and to make such other orders and decrees as justice and equity may require, and in said bill, so filed, said Pitcher and Bigelow duly intervened and joined as plaintiffs, and joined in the allegations and prayer of said bill; that said Guaranty Company duly entered its appearance to said bill; that on said February 1, 1909, said Circuit Court of Kanawha County, having full jurisdiction of all of the parties to and subject-matter of said bill, duly entered a decree dissolving said American Guaranty Company of Chicago, which decree is now in full force and effect, unmodified, unreversed and unappealed from; and also appointed a receiver, who has duly qualified as such, of all of said Guaranty Company's assets and effects located within said State of West Virginia; that a true copy of said proceedings in said Circuit Court of Kanawha County is herewith brought into court.

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12. That in consequence of the entry of said decree of dissolution,

said American Guaranty Company of Chicago has become a trustee, for its creditors and stockholders, of all of its property, assets and effects; that the receiver so as aforesaid appointed by said Circuit Court of Kanawha County has no jurisdiction outside of the State of West Virginia and has no authority or power outside of said State of West Virginia to collect or enforce collection of all or any of said property, assets and effects; that all of said property, assets and effects, as hereinbefore stated, except some nominal amounts held by some few banks in the progress of collection are located within said city of Chicago and within the jurisdiction of this court; that it is necessary to ascertain what, if anything, is owing to any and all of said 6500 contract-holders, and how much, if anything
13 in said fund so on deposit with said Royal Trust Company of Chicago shall be allot-ed or apportioned on any and all of said contracts; that the surrender value of said contracts is at least $1,000,000, and that some of the holders of said contracts threaten as your orators are informed and believe and state the fact to be that they will commence suits by attachment or otherwise against said Guaranty Company and levy upon its said property, assets and effect- so situated in said State of Illinois, and that by means of such attachments, priorities will be secured by some of the contract holders over others; that interminable, complicated and costly litigation will ensue and the property, assets and effects of said Guaranty Company will be wasted and destroyed to such a degree as to make the same utterly inadequate and insufficient, unless such property, assets and effects are taken possession of by a receiver to be appointed by this court to conserve and distribute the estate of said Guaranty Company among those entitled thereto.

13. That your orators file this, their bill of complaint, not only on behalf of themselves but also on behalf of all other stockholders of said Guaranty Company, and of all other creditors thereof who may ask and secure leave to intervene herein and become parties hereto.

In Consideration Whereof and for as much as your orators are remediless in the premises at or by the strict rules of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable.

To the end therefore, that the said American Guaranty Company of Chicago, which is hereby made defendant to this bill of complaint, may, if it can, show unto your Honors why your orators should not have the relief hereby prayed; that a full, true and just account may be had and taken of all of the property, assets and effects of
14 every description of said defendant; that all of its creditors and contract-holders may be ascertained and the amount or amounts due or owing to all of them respectively; that all of its stockholders and the amount of the stock held or owned by them, respectively, may be ascertained that all of said creditors, contract-holders and stockholders be allowed to file their petitions, exhibiting their respective claims and demands and to prove the same according to the usual practice in this court; that distribution be made of all of its property, assets and effects, when converted into money, first

among its creditors and contract-holders, as equity may required, and after satisfying all of its said creditors and contract holders, that the surplus remaining shall be distributed among its stockholders; that whatever funds, if any, may be found by this Honorable Court to be held in trust for all or any of said contract-holders shall be allotted and distributed by this court as equity may require; that a receiver may be appointed according to the course of practice in this court, and with the usual powers of receivers in like cases, of all of the property, assets and effects of every description of said defendant, and that said receiver be ordered and directed to convert said property, assets and effects into money at the earliest practicable moment; to collect all debts due said defendant, to bring such suits as may be necessary to accomplish that end, and to bring and defend all such suits as may be necessary to assert the rights and claims of said defendant in said property assets and effects, and to do all other acts necessary or proper to protect said property, assets and effects; that all individuals, firms, and corporations, including all of the officers, agents and employees of said defendant may be required and commanded, on demand of said receiver, to forthwith turn over and deliver to him any and all property, moneys, assets and effects, books, papers, vouchers and documents of every kind and description under their or any of their control which said defendant owns or is entitled to, or in which it has any interest; that any and all creditors and contract-holders of said defendant, and any and all other individuals, firms and corporations be enjoined from in any way intermeddling by suit or otherwise with all or any of the property, assets and effects of said defendant, and that your Honors may make such other orders and decrees and grant your orators such further or other relief as the controlling circumstances in this case may require, and to equity, and to your Honors shall seem fit and proper.

May it please your Honors to grant unto your orators a writ of subpœna to be directed to the said American Guaranty Company of Chicago, thereby commanding it, at a certain time and under a certain penalty therein to be limited, to appear before this Honorable Court, and then and there full, true, direct and perfect answer make, but not under oath, the same being hereby expressly waived, to all and singular, the premises and further to stand to, perform and abide such further order, direction and decree therein as to this Honorable Court shall seem meet.

And your orators will ever pray, etc.

CARRIE REBECCA FUREY,
Ex'tr'x Furey Estate.
CARRIE REBECCA FUREY.
CAROLINE LA TOUR FUREY.

STEERE, WILLIAMS & STEERE,
Sol'rs for Compl't, 659 Rookery.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Carrie Rebecca Furey and Caroline La Tour Furey, each
16 being severally sworn, each upon oath deposes and says that she has heard read the above and foregoing bill of complaint by them respectively subscribed and that said bill is true in every respect to the best of their respective knowledge, information and belief.

CARRIE REBECCA FUREY.
CAROLINE LA TOUR FUREY.

Subscribed and sworn to before me, a Notary Public, by said Carrie Rebecca Furey and Caroline La Tour Furey, this first day of February, A. D. 1909.

[SEAL.]

MARY CODY,
Notary Public.

17 EXHIBIT A.

I, Charles La Tour Furey, of the City of Chicago, County of Cook and State of Illinois, being over twenty-one years of age, and being of sound mind and memory, do by these presents make and declare the same to be my last will and testament, hereby revoking all former wills made by me.

First. I direct that all my just debts be paid.

Second. I devise to my loving wife, Carrie Rebecca Furey and to my loving daughter Caroline La Tour Furey, share and share alike, all the estate, right, title and interest in possession, reversion and remainder which I may have now and also at the time of my death of, in and to any lands, tenements hereditaments, annuities or rents, charged upon or issuing out of them; and I also bequeath all goods and chattels and personal estate of every description whatsoever by will or testament or otherwise, to have and to hold by them share and share alike absolutely in their own right, this to apply to each of the species of property contained in this paragraph.

Third. If at my death my said daughter Caroline La Tour Furey is still a minor, not having reached the legal age of eighteen years, it is my wish and I request that my said wife Carrie Rebecca Furey and my friend James L. Bigelow be appointed jointly guardians of my said daughter Caroline La Tour Furey.

Fourth. I nominate my said wife Carrie Rebecca Furey and my said friend James L. Bigelow to be jointly the executrix and the executor, with proper bond, of this my last will and testament.

Fifth. In event of the death of either the said Carrie Rebecca Furey or the said James L. Bigelow, it is my wish and I request that

Joseph W. Latimer, 3551 Ellis Avenue, Chicago, Illinois.
John B. Knight, 5634 Calumet Ave., Chicago, Ill.
Elizabeth C. Hawley, 16 Astor Street, Chicago, Ill.

18 the survivor be appointed sole guardian of the Caroline La Tour Furey, and sole executrix or executor, as the case may be, of this my last will and testament.

Witness my hand and seal this twenty-seventh day of February, A. D. 1902.

CHARLES LA TOUR FUREY. [SEAL.]

We, Joseph W. Latimer, John B. Knight and Elizabeth C. Hawley do hereby certify that we were each present when the above instrument was signed and witnessed the signature of the said Charles La Tour Furey, who declared the foregoing instrument to be his own free and voluntary act and deed, and to be his last will and testament that he signed the same in our presence, and at his request we signed the same as witnesses in his presence and in the presence of each other.

Dated this twenty-seventh day of February, A. D. 1902.

JOSEPH W. LATIMER.
3551 *Ellis Avenue, Chicago, Illinois.*
JOHN B. KNIGHT.
5634 *Calumet Ave., Chicago, Ill.*
ELIZABETH C. HAWLEY.
16 *Astor Street, Chicago, Ill.*

19 Will proved and admitted to record in open court this 8th day of Dec. A. D. 1908.

CHARLES S. CUTTING,
Probate Judge.

STATE OF ILLINOIS,
County of Cook, ss:

In the Probate Court of Cook County.

Proved and admitted to record in open court this 8th day of Dec. A. D. 1908.

GUY GUERNSEY, *Clerk.*

Filed Dec. 8, 1908. Guy Guernsey, Clerk.

20 STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to all to whom these presents shall come, Greeting:

Know Ye, That whereas, Charles La Tour Furey late of the County of Cook and State of Illinois, died on or about the 29th day of Nov., A. D. 1908, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that Carrie R. Furey

has been appointed executrix in and by the said last will and testament, to execute the same, and to the end that said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize her the said Carrie R. Furey as such executrix to collect and secure all and singular the goods and chattels rights and credits which were of the said Charles La Tour Furey at the time of his deceased, in whosesoever hands or possession the same may be found, in this State, and well and truly to perform and fulfill all such duties as may be enjoined upon her by the said will, so far as there shall be property, and the law charge her and in general to do and perform all other acts which now or hereafter may be required of her by law.

Witness, Guy Guernsey, Clerk of the Probate Court of said County of Cook, and the seal of said Court, this 8th day of Dec. A. D. 1908.

[L. S.]

GUY GUERNSEY, *Clerk.*

21 STATE OF ILLINOIS,
County of Cook, ss:

I, Guy Guernsey, Clerk of the Probate Court of Cook County, in the state aforesaid, do hereby certify that the within is a true and correct copy of the last will and testament of Charles La Tour Furey deceased, and of Letters Testamentary issued thereon, on the 8th day of Dec. A. D. 1908, to Carrie R. Furey, now in force, as it appears from the originals on file, and from the records of the Probate Court in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Probate Court, at Chicago, in said County, this 8th day of Dec. A. D. 1908.

[Seal of the Probate Court of Cook County, Illinois, Dec. 2, 1877.]

GUY GUERNSEY, *Clerk.*

22 EXHIBIT "B."

STATE OF WEST VIRGINIA:

Certificate of Incorporation.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, do hereby certify that an Agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The American Investment Guaranty Company for the purpose of receiving and investing money and making investment contracts to be sold on installments payments; and procuring for such of the investors in such investment contracts as may so desire policies of life insurance and of acting as agent and trustee for life insurance companies and for such investors.

Which corporation shall keep its principal office or place of business at Chicago, in the County of Cook and State of Illinois, and is to expire on the first day of July, A. D. 1942. And for the purpose of forming said corporation, we have subscribed the sum of two hundred thousand dollars, to the capital thereof and have paid in on said subscriptions the sum of twenty thousand dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to one million dollars ($1,000,000.00) in all.

23 The capital so subscribed is divided into shares of one hundred dollars ($100.00) each, which are held by the undersigned respectively as follows, that is to say: by

Oliver H. Horton, Chicago, Illinois	250	shares.
Lewis W. Pitcher, " "	250	"
Edward A. Bigelow, " "	150	"
William D. Preston, " "	100	"
James L. Bigelow, " "	100	"
John P. Wilson, " "	50	"
Frank D. Lewis, Indianapolis, Indiana	250	"
Herman Kuehn, Detroit, Michigan	250	"
Thomas M. Hoyne, Chicago, Illinois	10	"
Alfred P. Bigelow, " "	10	"
Willis F. Johnson, " "	50	"
J. B. Knight, " "	530	"
	2000	shares.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 14th day of July, 1892.

O. H. HORTON.
LEWIS W. PITCHER.
EDWARD A. BIGELOW.
WILLIAM D. PRESTON.
JAMES L. BIGELOW.
THOS. M. HOYNE.
JOHN P. WILSON.
FRANK D. LEWIS.
HERMAN KUEHN.
J. B. KNIGHT.
WILLIS F. JOHNSON.
ALFRED P. BIGELOW.

24 Wherefore, the corporators named in the said Agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the First day of July, nineteen hundred and forty-two, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the Great Seal of the said State, at

the City of Charleston, this nineteenth day of July eighteen hundred and ninety-two.

[State of West Virginia, Montano Semper Liberi.]

WM. A. OHLEY,
Secretary of State.

25 Copy.

STATE OF WEST VIRGINIA:

Certificate.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that on the 19th day of July, 1892, a certificate of incorporation was issued in due form, from my said office to The American Investment Guaranty Company, as appears from the records of my said office; and I further certify that, on the 28th day of January, 1898, the following resolution, agreement, certificate and affidavit were produced to me, in my said office, which resolution, agreement, certificate and affidavit are in the words and figures following:

At the annual meeting of the stockholders of The American Investment Guaranty Company, held at room 54, Brother Jonathan Building, Number- 2 and 4 Sherman Street, Chicago, on the twelfth day of January, 1898, at eleven o'clock A. M. said meeting having been especially called for the purpose of changing the corporate name, and for increasing the purposes for which the Company was formed; all the stockholders having had due notice thereof, it was

Resolved, That the company eliminate from its corporate title the word "Investment", and that hereafter, the name of the corporation shall be "American Guaranty Company of Chicago", instead of "The American Investment Guaranty Company."

It was further resolved, That the Company hereby adopt a new agreement, so that it shall be for the purpose of

(1) To enter into contract with individuals, firms and corporations.

(2) To act as and transact the business of Agent, and as such to (*b*) acquire, purchase, hold, sell, dispose of, pledge and otherwise deal in stocks, bonds, securities, and evidences of indebtedness or personal property, and to obtain and furnish information concerning same.

26 (*c*) To acquire by purchase, lease, mortgage or otherwise hold real estate, and to sell, transfer, mortgage, lease, or otherwise dispose of same.

(*d*) To represent individuals in their dealings with firms, corporations associations or persons, in the transaction of any lawful business.

(3) To act as Receiving and Disbursing Agent for persons or corporations, in any business transaction.

To guarantee the contracts and obligations of Individuals, firms,

corporations or associations, in any business transactions, and to do and perform all such lawful acts as may be necessary or expedient in the conduct of its said business.

We, the undersigned, Stockholders of The American Investment Guaranty Company, owning the number of shares of the capital stock of said company, set opposite our names, hereby assent to the change in the corporate name, and to the new agreement for said Company, adopted by the foregoing resolution.

Given under our hands, this 12th day of January, A. D. 1898.

PERCIVAL STEELE,	1005	shares.
JAMES L. BIGELOW,	one	"
DAVID R. LAMONT,	one	"
D. E. TOWN,	one	"
FRANK D. LEWIS,	310	"
A. P. BIGELOW,	10	"
JESSE W. ROBERTS,	one	"

We, Percival Steele, President, and David R. Lamont, Secretary of the American Investment Guaranty Company, hereby certify that the persons whose names are signed above, own the
27 number of shares of capital stock of said company, set opposite their names, respectively; that they are a majority of the stockholders of said company, and that the shares of capital stock so owned by them are a majority of the shares of capital stock of said company; and we further certify that the resolution set forth herein is a true copy of the resolution passed at the stockholders' meeting of said company, on the 12th day of January, 1898, and that the same appears upon the records of said company.

PERCIVAL STEELE,
President.

[SEAL.] DAVID R. LAMONT,
Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

I, Roscoe Linscott Roberts, a notary public in and for the county of Cook, in the State of Illinois, do hereby certify that A. P. Bigelow, James L. Bigelow, Percival Steele, D. E. Town, Jesse E. Roberts, David R. Lamont and Frank D. Lewis, stockholders of The American Investment Guaranty Company, personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged to me that they, and each of them, signed the within certificate, for the uses and purposes therein set forth, and that the said resolution therein contained was passed at a meeting of the stockholders of The American Investment Guaranty Company, held in the City of Chicago, in the County and State aforesaid, on the twelfth day of January, 1898.

Given under my hand and notarial seal this 21st day of January, 1898.

ROSCOE LINSCOTT ROBERTS.

[SEAL.] *Notary Public.*

28 Wherefore, I do declare the name of the said corporation from this date henceforth to be American Guaranty Company of Chicago; and I further declare the stockholders of said corporation, their successors and assigns, to be from this date until the expiration of the period named in the said certificate of Incorporation issued from my said office, on the 19th day of July, 1892, to said The American Investment Guaranty Company, a corporation by the name of American Guaranty Company of Chicago, and for the purpose set forth in the foregoing resolution and agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-eighth day of January, 1898.

[G. S.] WM. M. O. DAWSON,
Secretary of State.

29 STATE OF WEST VIRGINIA:

Certificate.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that Charles L. Furey, Vice-president of the American Guaranty Company of Chicago a corporation created and organized under the laws of the State of West Virginia, has certified to me under his signature and the corporate seal of said corporation, that, at a general meeting of the stockholders of said corporation, regularly held pursuant to law, at the office thereof, in the city of Chicago, State of Illinois, on the 13th day of April, 1901, at which meeting a quorum of the stock and of the stockholders was present, the following resolution was duly and regularly adopted and passed to-wit:

"Resolved, That the authorized capital of the American Guaranty Company of Chicago be reduced from ten thousand shares of the par value of 100 dollars each to five thousand shares of the par value of 100 dollars each, so that the authorized capital stock of said corporation shall be $500,000 all subscribed and paid for."

Wherefore, I do declare said decrease of the authorized capital stock as set forth in the foregoing resolution authorized by law.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-seventh day of April, 1901.

[G. S.] WM. M. O. DAWSON,
Secretary of State.

30 (*Certificate under Section 906, Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
State of West Virginia,
Office of Secretary of State:

I, C. W. Swisher, Secretary of State of the State of West Virginia, being the officer, who, under the constitution and laws of said state, is authorized to issue certificates of incorporation, of all companies

incorporated under the laws thereof, and being the officer authorized to issue certificates certifying changes in and amendments to such certificates of incorporation, and being the officer who is the keeper of all the records and papers relating to the creation of such incorporated companies and of changes in and amendments to said certificates of incorporation, including the powers of attorney of such incorporated companies, appointing a resident agent or attorney in said State, and of the reports of such incorporated companies, and being the officer authorized to authenticate exemplifications of the same, do hereby certify that the foregoing and annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as said Secretary of State, and found to be a true and correct copy of the certificate of New Agreement and change of name of the American Investment Guaranty Company to American Guaranty Company of Chicago, dated the 28th day of January 1898, and of the certificate of decrease, dated the 27th day of April, 1901, and recorded in the records of Corporations of my said office, and that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In Testimony Whereof, I have hereunto attached my official signature and the Great Seal of the State of West Virginia, at the capitol in the City of Charleston, this 5th day of August, 1907.

[GREAT SEAL.] C. W. SWISHER,
Secretary of State.

(Here follow facsimiles,
33 Dollars. marked pp. 31-2.) Number
$10,000. A.

American Guaranty Company of Chicago

Hereby covenants and guarantees to pay to the order of the applicant an annual income of One Thousand Dollars for the period of ten years, being in all the sum of Ten Thousand Dollars payable only upon presentation and surrender of the income coupons hereto attached as they severally become due, subject to the conditions set forth therein, the last coupon to be accompanied by this contract for cancellation; or upon presentation and surrender of this contract with all coupons attached there will be paid Seven Thousand Five Hundred Dollars in Gold Coin on the fifth day of ——, 192–.

This Contract is made in consideration of the application of —— —— of ——, and the payment of Thirty Dollars due —— 5th, 190—, the receipt of which is hereby acknowledged, and the further payment of the same amount to be made on the fifth day of each and every month thereafter until payments for 180 months shall have been made in all, after which the coupons hereto attached will be countersigned upon presentation.

The privileges, conditions and schedule printed on the third page hereof, together with the application herefor, are made a part of this contract.

In Witness Whereof, the American Guaranty Company of Chi-

xhibit "C"

UNITED STATES OF AMERICA

NUMBER

AMERICAN GUARANTY COMPANY

OF CHICAGO.

Know all Men by these Presents that whereas

hereafter styled Nominator has paid to the American Guaranty Co

AMERICAN GUARANTY COMPANY

OF CHICAGO.

Know all Men by these Presents that whereas

_____

hereafter styled Nominator has paid to the American Guaranty Company
of Chicago _____ *Dollars*
in advance and agrees to pay a like sum on the fifth day of _____
hereafter until instalments for _____ *years have been made.*
Now therefore the said American Guaranty Company HEREBY COVENANTS AND GUARANTEES
that on the fifth day of _____ *Nineteen Hundred and* _____ *upon*
due surrender of this Indenture, provided it is then in force, to pay unto
_____ *hereafter styled Nominee,*
the sum of _____ *Dollars*
in Gold Coin of the United States of America, or in lieu thereof, to
deliver at its home office _____ *registered ten year five per cent*
Coupon Gold Bonds of the denomination of One Thousand Dollars
each, said Bonds to be in the form of the Specimen Bond herewith.
The application hereof and the privileges and conditions on the third
page hereof form a part of this Contract.

In Witness Whereof

THE American Guaranty Company of Chicago,

has caused this instrument to be executed in its name and by its proper
officers and at its General Offices at
Chicago, Ill., this _____ *day of* _____ *19*

SECRETARY

PRESIDENT

THE BANK NOTE CO. CHICAGO

cago has caused this contract to be executed in its name and by its proper officers and at its general offices at Chicago, Illinois, this — day of ——, 190—.

CHAS. L. FUREY,
Vice-President.

—— ——, *Secretary.*

Canceled.

\$1000. \$1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

No. A.

L. W. PITCHER, *Secretary.*

Countersigned.

—— ——, *Treasurer.*

(Endorsed on the back:) (1.)

\$1000. \$1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

No. A.

L. W. PITCHER, *Secretary.*

Countersigned.

—— ——, *Treasurer.*

(Endorsed on the back:) (2.)

36 \$1000. \$1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon presentation any time after all

payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

No. A.

L. W. PITCHER, *Secretary.*

Countersigned.

—— ——, *Treasurer.*

(Endorsed on the back:) (3.)

37 $1000. $1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

No. A.

L. W. PITCHER, *Secretary.*

Countersigned.

—— ——, *Treasurer.*

(Endorsed on the back:) (4.)

38 $1000. $1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

No. A.

L. W. PITCHER, *Secretary.*

Countersigned.

—— ——, *Treasurer.*

(Endorsed on the back:) (5.)

39 $1000. $1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the Legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon Presentation any time after all

payments have been made on Income Contract, of which it forms a part, and is not payable until so Countersigned.
No. A.

L. W. PITCHER, *Secretary.*

Countersigned:
—— ——, *Treasurer.*

(Endorsed on the back:) (6.)

40 $1000. $1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the Legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon Presentation any time after all payments have been made on Income Contract, of which it forms a part, and is not payable until so Countersigned.
No. A.

L. W. PITCHER, *Secretary.*

Countersigned:
—— ——, *Treasurer.*

(Endorsed on the back:) (7.)

41 $1000. $1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the Legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon Presentation any time after all payments have been made on Income Contract, of which it forms a part, and is not payable until so Countersigned.
No. A.

L. W. PITCHER, *Secretary.*

Countersigned:
—— ——, *Treasurer.*

(Endorsed on the back:) (8.)

42 $1000. $1000

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the Legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon Presentation any time after all

payments have been made on Income Contract, of which it forms a part, and is not payable until so Countersigned.

No. A.

L. W. PITCHER, *Secretary.*

Countersigned:

—— ——, *Treasurer.*

(Endorsed on the back:) (9.)

43 $1000. $1000.

American Guaranty Company of Chicago

On the Fifth day of —— Will pay at its General Offices in the City of Chicago to the Order of the Legal Holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon Presentation any time after all payments have been made on Income Contract, of which it forms a part, and is not payable until so Countersigned.

No. A.

L. W. PITCHER, *Secretary.*

Countersigned:

—— ——, *Treasurer.*

(Endorsed on the back:) (10.)

44 Privileges and Conditions.

SECTION 1. As security for the redemption of this contract the American Guaranty Company of Chicago, (hereafter styled the Company) covenants and guarantees that it will keep on deposit in trust with an institution legally empowered to act as such trustee, cash, first mortgages, on real estate, bonds issued by the United States of America or municipalities thereof, and such other securities as banks and trust companies invest in to an amount equal to the cash loan value hereunder, less the amount of any unpaid loans hereon.

SECTION 2. At any time after this contract has been in force two(2) or more full years, provided all payments previously due have been made, it may be exchanged for a Paid-up Income Contract for the amount specified in the Paid-up Income Schedule indorsed hereon. The coupons forming a part of any Contract for which this may be exchanged will be payable at the same time and in the same manner as the coupons attached hereto would have been paid had this contract been continued to maturity.

SECTION 3. Should this Contract be exchanged for a Paid-up Income Contract and any loss made on this Contract remain unpaid at the time of such exchange, an assignment of the Paid-up Income Contract as full collateral security will be accepted.

45 SECTION 4. After payments have been made covering a period of twelve (12) months the Company upon request for

the purpose only of making not more than twelve (12) monthly payments in advance will loan the amount required.

SECTION 5. At any time the Company will loan the legal holder in cash any amount not exceeding the cash loan value of any year for which all payments have been made, less the amount of any unpaid loans hereon.

SECTION 6. After payments for two (2) or more full years have been made the Company will loan the amount stipulated in the Advance Loan Schedule less one year's interest, and the amount of any unpaid loans, provided twelve (12) monthly payments in advance are made at the time the loan is secured.

SECTION 7. The assignment of this Contract will be accepted as full collateral security for any loan made hereon.

SECTION 8. Any loan made hereon will be renewed at maturity upon request.

SECTION 9. Interest on loans and on renewals of same, will be payable in advance, but any part of the sum borrowed may be repaid at any time previous to maturity, interest being retained only for the actual time the loan remains unpaid.

SECTION 10. The amount of all loans remaining unpaid will be deducted from any settlement made hereunder.

46 SECTION 11. Upon surrender of this contract for cancellation, at any time after it has been in force two (2) or more full years, the Company will pay to the legal holder an amount equal to the cash loan value at the end of the last year covering which all payments have been made.

SECTION 12. The payments provided in this Contract to be made by or to the owner are due and payable at the general offices of the Company; and such payments due the Company, if made elsewhere will not be binding upon the Company until a receipt is issued for same signed by its president, vice-president, secretary, treasurer or cashier.

SECTION 13. Should the stipulated payments hereunder be discontinued before the period of twenty-four (24) months has been covered, all moneys previously paid shall remain the property of the Company, but the amount of same will be allowed as a credit on a new Contract for a like amount provided the legal holder hereof within one year from the time of such discontinuance applies for said new Contract and makes at least one monthly payment in advance. Failure to make such application and payment within the time specified shall work an unconditional forfeiture of this Contract and all payments made hereon.

47 SECTION 14. At the expiration of one hundred eighty (180) months, all payments having been made for that time, at the option of the legal holder this Contract with all coupons attached may be surrendered for cancellation; and upon such surrender duly made the Company will pay to the legal holder seventy five hundred dollars ($7,500.00) in gold coin; or it may be exchanged for a Paid-up Income Contract for eleven thousand, two hundred fifty dollars ($11,250.00) payable in fifteen (15) equal annual instalments of seven hundred fifty dollars ($750.00 each;

or it may be exchanged for a Paid-up Income Contract for twelve thousand five hundred dollars ($12,500.00) payable in twenty (20) equal annual instalments of six hundred twenty-five dollars ($625.00) each.

SECTION 15. At the maturity of any coupon hereunder, or at the time any payment is due under the terms of any contract for which this Contract may be exchanged, upon due surrender of the remaining Coupons or Contract providing for payments the Company will pay to the legal holder thereof the then cash value acording to its present published table of conversion rates.

SECTION 16. Should the applicant for this Contract die and his or her heirs or legal representatives not desire to avail themselves of any of the privileges originally extended, the Company will upon request made within sixty days after said decease waive the conditions of the Contract and upon surrender of same with all coupons attached permit the withdrawal of the full amount of all moneys paid hereon.

48

Paid-up income schedule referred to in section 2.		Cash loan value referred to in sections 1, 5, and 11.		Advance loan schedule referred to in section 6.	
At the end of		At the end of		At end of	
2nd year	$ 1333.32	2nd year	$ 316.80	2nd year	$ 720.00
3rd "	$ 2000.00	3rd "	$ 655.20	3rd "	$1080.00
4th "	$ 2666.66	4th "	$ 993.60	4th "	$1440.00
5th "	$ 3333.32	5th "	$1332.00	5th "	$1800.00
6th "	$ 4000.00	6th "	$1685.80	6th "	$2176.38
7th "	$ 4666.66	7th "	$2064.84	7th "	$2579.62
8th "	$ 5333.32	8th "	$2475.74	8th "	$3016.71
9th "	$ 6000.00	9th "	$2927.34	9th "	$3497.16
10th "	$ 6666.66	10th "	$3429.74	10th "	$4031.62
11th "	$ 7333.32	11th "	$3995.30	11th "	$4633.30
12th "	$ 8000.00	12th "	$4638.30	12th "	$5317.34
13th "	$ 8666.66	13th "	$5376.30	13th "	$6102.44
14th "	$ 9333.32	14th "	$6230.70	14th "	$7011.38
15th "	$10000.00	15th "	$7500.00	15th "	$7978.72

SECTION 17. The Company will assume no responsibility by reason of consenting to any assignment of this Contract.

SECTION 18. No agent has the right or power to modify this Contract or bind the Company by any promise or representation, information or statement not contained herein.

L. W. PITCHER, *Secretary.*

(The word Canceled in perforation.)

49 (Endorsed on the back:) Number A. American Guaranty Company of Chicago. $10,000. Ten Year Income Contract.

Assignment.

For value received I hereby assign, transfer and set over to —— of —— the within contract and all rights, privileges and benefits accruing thereunder.

Dated at —— this — day of —— 19—

—— ——,
Applicant.

8—. Received from the American Guaranty Company of Chicago —— Dollars for all claims under the within contract.

Witness:

—— ——.

(Endorsed:) Filed Feb. 2, 1909. H. S. Stoddard, Clerk.

50 And on to-wit: the first day of April, 1909, there was filed in the clerk's office of said Court in said entitled cause, a certain transcript of record from the Circuit Court of Kanawha County, West Virginia, in words and figures following to-wit:

Transcript of Record from Circuit Court of Kanawha County, West Virginia.

STATE OF WEST VIRGINIA,
Kanawha County, ss:

In the Circuit Court of Kanawha County.

To the Honorable the Judges of the Circuit Court in and for Said County:

Humbly complaining, your oratrix, Carrie Rebecca Furey, as executrix of the last will and testament of Charles La Tour Furey, deceased, and in her own right, and your oratrix, Caroline La Tour Furey, in her own right and by G. S. Couch, Jr., her next friend, and on behalf of themselves and all other stockholders, as complainants herein, show unto the court the following:

1. That said Charles La Tour Furey departed this life on or about November 29, 1908, in the City of Chicago, County of Cook and State of Illinois; that he left a last will and testament which was duly admitted to Probate in the Probate Court of said Cook County, Illinois, on December 8, 1908, which court then had and still has full and competent jurisdiction to admit said will to probate and to administer upon the estate of said Charles La Tour Furey, deceased; that letters testamentary duly issued out of said Probate Court to your oratrix, said Carrie Rebecca Furey as such executrix of said last will and testament and of said estate of said Charles La Tour Furey, deceased, on said December 8, 1908, upon which date your oratrix, Carrie Rebecca Furey, duly qualified as such executrix, and since said date has continued to and still is acting as such executrix under

the jurisdiction and control of said Probate Court; that said letters testamentary are still in full force and effect, unrevoked and
51 unappealed from; that in and by said last will and testament one James L. Bigelow was also named as an executor thereof, but that prior to said December 8, 1908, said James L. Bigelow in writing filed in said Probate Court, duly renounced his said appointment and refused to act as such executor, and in consequence and by reason thereof said Probate Court duly appointed, as aforesaid, Carrie Rebecca Furey as sole executrix of said last will and testament and of said estate of said Charles La Tour Furey, deceased; that a true and correct copy of said last will and testament and of said letters testamenary, so as aforesaid issued to said Carrie Rebecca Furey, as said executrix, is hereto attached as Exhibit "A" and by express reference thereto made part hereof.

2. That in and by said last will and testament said Charles La Tour Furey, deceased, devised to your oratrix, said Carrie Rebecca Furey (his widow), and to his daughter, your oratrix said Caroline La Tour Furey, all of the real estate and personal property of every description of said Charles La Tour Furey, to have and to hold the same, share and share alike, absolutely in their own right; that on February 27, 1902, the date of said last will and testament, said Caroline La Tour Furey was a minor, of the age of twelve years; that at the time of said death of said testator she was nineteen years of age; that the age of majority of female minors in the State of Illinois was at the time of said death of said Charles La Tour Furey and now is, eighteen years; that both of your oratrices long before and at the time of said death were and continuously since have been and now are citizens of Illinois and residents of Chicago, in said State.

52 3. That at the time of his death said Charles La Tour Furey was the absolute owner of 602 shares of the capital stock of the par value of $100 each, of the American Guaranty Company of Chicago, the defendant hereinafter named, and that the absolute title to said 602 shares of stock is now in your oratrix, said Carrie Rebecca Furey, as executrix as aforesaid, solely for the benefit of herself and her said daughter, Caroline La Tour Furey; that your oratrix, Carrie Rebecca Furey, as executrix as aforesaid, now has in her possession all of the stock certificates representing said 602 shares of capital stock, which stock certificates were duly issued by said American Guaranty Company of Chicago to said Charles La Tour Furey, long prior to his decease.

4. That said American Guaranty Company of Chicago was duly incorporated under the laws of West Virginia, and that a certificate of such incorporation duly issued by the Secretary of State of West Virginia, under the seal of said State, on July 18, 1892; that said Company was originally incorporated, as aforesaid, under the name of The American Investment Guaranty Company, with an authorized capital stock of $200,000, and authority to increase the same to $1,000,000, that thereafter, on or about January 12, 1898, the name of said Company was duly changed from that of The American Investment Guaranty Company to the American Guaranty

Company of Chicago; that on April 13, 1901, the authorized capital of said American Guaranty Company of Chicago was duly reduced from 10,000 shares of the par value of $100. each, to 5,000 shares, of the par value of $100. each, and that since April 13, 1901, the authorized capital stock of said company has been $500,000; that said American Guaranty Company was duly incorporated
53 for a period expiring July 1, 1942, and among the objects for which said company was and is incorporated, under the certificate of incorporation and the amendments thereto, was and is to enter into contracts with individuals, firms and corporations, known as "investment", "service" and "income" contracts, hereinafter more particularly referred to; that a true and correct copy of said certificate of incorporation and of all amendments thereto, is hereto attached as Exhibit "B" and by express reference thereto made part hereof.

5. That the principal office of said Guaranty Company ever since its incorporation always has been and is in the city of Charleston, in said Kanawha County, in the state of West Virginia, that its administrative offices have been and now are in the City of Chicago, and State of Illinois; that beginning, to-wit: on July 18, 1892, and continuously since up to December 15, 1908, said Guaranty Company has carried on its said business of issuing and dealing in investment, service and income contracts, and on said December 15, 1908, said Guaranty Company had and now has outstanding, in full force and effect, contracts of a total nominal value or possible contingent amount aggregating $15,825,000, divided into $3,254,000, of investment and service contracts, and $12,571,000 income contracts; that the amount of said respective contracts vary from a minimum of $1,000 to a maximum of $10,000, upon the dates of their maturity; that said contracts mature at periods of ten, fifteen and twenty years from the respective dates of their issue; that the total cash or surrender value of all of said contracts is many millions of dollars less than said nominal value thereof and is estimated by your oratrixes to be, to-wit: $1,000,000, that there are about 6500 of said contracts now outstanding, which are scattered throughout the United States, Canada and Mexico; that all of said contracts provide by their terms that the holders thereof shall pay to said Guaranty Company specified amounts in period-
54 ical installments payable monthly, quarterly, semi-annually or annually, and further provide that default in making of any of said periodical payments during the first two years of the life of said contracts shall result in a forfeiture thereof, and that after the lapse of said two years said contracts shall become non-forfeitable, but that defaults made subsequent to said two years shall result in either an exchange of the contract for one that is paid up, or surrendered for a specified cash surrender value; that there are attached hereto specimen copies of said investment, service and income contracts as Exhibits "C," "D," and "E" and which by express reference thereto are made part hereof.

6. That said investment and service contracts provide by their terms that as security for the redemption of the same, said Guaranty

Company shall have and keep in trust, moneys and other securities to such an amount as shall at the time equal in the aggregate seventy-five per cent. of the cash value of said contracts, as shown by the schedules appended thereto, and that said income contracts, issued prior to 1906, contain similar terms, and those issued in 1906 and since provide that the moneys and other securities so to be kept in trust shall be in an amount equal to the cash loan value specified in said income contracts, less the amount of any unpaid loans thereon; that pursuant to the provisions so contained in said contracts, said Guaranty Company did deposit and now has on deposit a fund consisting of cash and other securities aggregating, to-wit: over $550,000; that in addition to said fund said Guaranty Company now has assets consisting of cash, securities, bills receivable, loans to contract holders and other assets, all estimated to be worth, to-wit: over $750,000.

7. That though the total authorized capital stock of said Guaranty Company is now $500,000, there was at the time of the death of said Charles La Tour Furey and there now is issued and outstanding, only 962 shares of said stock, of the par value of $100 each; that of said 962 shares 602 shares so as aforesaid belong to
55 and are the property of the said estate of said Charles La Tour Furey, deceased, as hereinbefore stated; that the remaining 360 shares belong, 260 thereof to Lewis W. Pitcher and the other 100 shares to James L. Bigelow; that said Pitcher and Bigelow now and for many years continuously last past have been, respectively, Secretary and Treasurer of said Guaranty Company; that the said 260 shares belonging to said Pitcher are now, and since March 28, 1906 have continuously been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Pitcher to said Guaranty Company, contracted prior to the date last aforesaid; that the said 100 shares belonging to said Bigelow now are and continuously since March 24, 1905 have been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Bigelow to said Guaranty Company, contracted prior to the date last aforesaid; that — the time of the death of said Charles La Tour Furey, the total outstanding stock of said Guaranty Company was owned by said Charles La Tour Furey and said Pitcher and Bigelow, respectively in the amounts hereinbefore stated; that from a time prior to July 1, 1908 continuously up to and including the present time, the stockholders of said company were said Charles La Tour Furey (and after his death his said estate) and said Pitcher and said Bigelow and none other; that from a time prior to July 1, 1908, continuously up to and including the present time, there were and are only three stockholders of said Company.

8. That on or about January 11, 1899, said Charles La Tour Furey first became connected with said Guaranty Company, and on or about said date was elected vice-president thereof and continuously thereafter, up to the time of his death, continued to be such vice-president; that as soon as he became such vice-president with the approval and concurrence of the Board of Directors of said Guar-

anty Company, he assumed the active management and con-
56 trol of the business of said Guaranty Company and continued in such management and control continuously until the time of his death; that on June 23, 1903, at a meeting of the Board of Directors of said Guaranty Company, the following resolution was duly and unanimously adopted:

"Resolved, the Vice-president, by virtue of his office is hereby constituted chairman of the Board of Directors, and is to assume and perform all the duties of the president, it being also understood that the vice-president shall take upon himself the duty of generally supervising all details and operation of the business."

That pursuant to said resolution and in compliance therewith, said Charles La Tour Furey, as such Vice-president, did continuously since June 23, 1903, until the time of his death, act as Chairman of the Board of Directors of said Guaranty Company and assumed and performed all the duties of the President thereof, and took upon himself the duty of generally supervising all details and the operation of the business of said Guaranty Company; that said Charles La Tour Furey possessed expert knowledge and ability in the kind of business in which said Guaranty Company was engaged, as aforesaid, and by reason of his said knowledge and ability said Charles La Tour Furey was put and continued in the practical control and management of the business of said Company, and was in such control and management at the time of his death; that when he first became Vice-president of said company as aforesaid, its total outstanding contracts was of about $3,000,000, nominal value, while at the time of his death the nominal value of the outstanding contracts, aggregated, as aforesaid, about $15,825,000; that such increase was due to said expert knowledge and ability of said decedent; that since November 29, 1908, the date of the death of said Charles La Tour Furey, and up to December 15, 1908, your
57 oratrix, Carrie Rebecca Furey, executrix as aforesaid, observed the workings of the business of said company and found that unless some successor of equal expert knowledge and ability to that possessed by said decedent could be found to take his place said business could not be advantageously or successfully conducted; that she made careful investigation and endeavored, but unsuccessfully, to find a successor to said decedent in said Company, and therefore on December 15, 1908, concluded and advised that said Company should temporarily at least, abstain from issuing new contracts and accordingly, since said date, said company has issued no new contracts; that your oratrix, said Carrie Rebecca Furey, never had any business experience of any kind, and said Caroline La Tour Furey was at the time of her father's death attending school, and that neither of your oratrixes has the experience, ability or qualification to conduct said business nor is willing to carry on and conduct the same or to further continue the interest of said estate as a stockholder in said company; that in view of the premises your oratrixes and said Pitcher and Bigelow, together owning all of the issued stock of said Guaranty Company, have concluded that it is to the best interests of said Company, its stock-

holders and all of its contract holders, that said Company shall be dissolved and its business and affairs wound up and its assets liquidated and distributed in accordance with the rights of those entitled thereto; that other than its obligations on said contracts, said Guaranty Company has no liabilities whatever except to a nominal amount for current expenses, and except what may be owing for commissions to said Charles La Tour Furey and agents; that said Guaranty Company has no liabilities of any kind in the State of West Virginia other than to forty-eight contract holders none of whose contracts has matured and upon none of which is said Guaranty Company in any way in default and the total surrender or cash value of which does not exceed $9,751.44; that all of the prop-
58 erty and effects of said Guaranty Company are in said City of Chicago, except a few cash balances in little more than nominal amounts due to said Guaranty Company from about fifteen banks outside of Chicago, which have been the collecting agents of said Guaranty Company.

9. That your oratrixes, constituting and being more than one-third in interest of the stockholders of said Guaranty Company, desire to wind up its affairs, and with said Pitcher and Bigelow, who also desire to wind up its affairs, constitute the entire interest of the stockholders of said Company.

Wherefore, the premises considered, your oratrixes make said American Guaranty Company of Chicago a party defendant hereto and pray that process, in due form, returnable as provided by law, may issue against it; that it may be required to make answer hereunto but not under oath, answer under oath being hereby expressly waived; that this court decree a dissolution of said American Guaranty Company of Chicago, and make such orders and decrees, and award such injunctions in the cause as justice and equity may require; and appoint one or more persons to be receivers to take charge of and administer the assets of said defendant company, and grant such other and appropriate relief as may be proper in the premises.

And your oratrixes will ever pray, etc.

CARRIE REBECCA FUREY.
Executrix Furey Estate,
CAROLINE LA TOUR FUREY.
CARRIE REBECCA FUREY.

59 STATE OF ILLINOIS,
County of Cook, ss:

Carrie Rebecca Furey and Caroline La Tour Furey, each being severally sworn, each upon oath deposes and says that she has heard read the above and foregoing bill of complaint, by them subscribed, and that said bill is true in every respect to the best of the knowledge, information and belief of each of these deponents.

CARRIE REBECCA FUREY.
CAROLINE LA TOUR FUREY.

Subscribed and sworn to before me, a Notary Public, by said Carrie Rebecca Furey and said Caroline La Tour Furey, this 30th day of January, A. D. 1909.

[SEAL.] MARY CODY,
Notary Public.

HAL C. BANGS,
BROWN, JACKSON & KNIGHT,
Solicitors for Complainants.

60 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

In the Circuit Court of Kanawha County.

CARRIE REBECCA FUREY, Individually and as Executrix, etc., and CAROLINE LA TOUR FUREY, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

The American Guaranty Company of Chicago, defendant in the above entitled cause, hereby enters its appearance herein and consents to the granting of the prayer contained in said bill of complaint and to the entry of a decree of dissolution of said American Guaranty Company of Chicago, and to the appointment of a receiver to take charge of and administer its assets, and to the entry of such other orders and decrees and to the awarding of such injunctions in the case as equity and justice may require.

AMERICAN GUARANTY COMPANY OF CHICAGO,
By FREDERICK M. STEELE, *President.*
ANGUS W. McDONALD,
Sol. for American Guaranty Company.

Attest:
L. W. PITCHER,
[SEAL.] *Secretary.*

61 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

In the Circuit Court of Kanawha County.

CARRIE REBECCA FUREY, Individually and as Executrix, and CAROLINE LA TOUR FUREY, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Lewis W. Pitcher and James L. Bigelow join as complainants in the above and foregoing bill of complaint, and request that the prayer thereof be granted.

LEWIS W. PITCHER,
JAMES L. BIGELOW,
By HAL C. BANGS,
Their Attorney.

62 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

In the Circuit Court of Kanawha County.

CARRIE REBECCA FUREY, Individually and as Executrix, etc., and CAROLINE LA TOUR FUREY, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Lewis W. Pitcher and James L. Bigelow, being the same persons named in the above and foregoing bill of complaint hereby state that they have heard read the bill and know its allegations and prayer; that the said allegations are true and that the prayer thereof ought to be granted, and they consent to the granting of the same; that the granting of said prayer is to the best interests of said American Guaranty Company of Chicago and to all of its stockholders and creditors, and they respectively request that the said court shall grant the decree of dissolution of said American Guaranty Company of Chicago and appoint a receiver to take charge of and administer its assets, and make such other orders and decrees and award such injunctions in the cause as equity and justice may require.

LEWIS W. PITCHER.
JAMES L. BIGELOW.

63 EXHIBIT "A."

I, Charles La Tour Furey, of the City of Chicago, County of Cook and State of Illinois, being over twenty-one years of age, and being of sound mind and memory, do by these presents make and declare the same to be my last will and testament, hereby revoking all former wills made by me.

First. I direct that all my just debts be paid.

Second. I devise to my loving wife, Carrie Rebecca Furey and to my loving daughter Caroline La Tour Furey, share and share alike, all the estate, right, title and interest in possession, reversion and remainder which I may have now and also at the time of my death of, in and to any lands, te*nements*, hereditaments, annuities or rents, charged upon or issuing out of them; and I also bequeath all goods and chattels and personal estate of every description whatsoever by will or testament or otherwise, to have and to hold by them share and share alike absolutely in their own right, this to apply to each of the species of property contained in this paragraph.

Third. If at my death my said daughter Caroline La Tour Furey is still a minor, not having reached the legal age of eighteen years, it is my wish and I request that my said wife Carrie Rebecca Furey and my friend James L. Bigelow be appointed jointly guardians of my said daughter Caroline La Tour Furey.

Fourth. I nominate my said wife Carrie Rebecca Furey and my said friend James L. Bigelow to be jointly the executrix and the executor, with proper bond, of this my last will and testament.

Fifth. In event of the death of either the said Carrie Rebecca Furey or the said James L. Bigelow, it is my wish and I request that Joseph W. Latimer, 3551 Ellis Avenue, Chicago, Illinois, John B. Knight, 5634 Caulmet Ave., Chicago, Ill. Elizabeth C. Hawley, 16 Astor Street, Chicago, Ill. the survivor be appointed
64 sole guardian of the said Caroline La Tour Furey, and sole executrix or executor, as the case may be, of this my last will and testament.

Witness my hand and seal this twenty-seventh day of February, A. D. 1902.

CHARLES LA TOUR FUREY. [SEAL.]

We, Joseph W. Latimer, John B. Knight and Elizabeth C. Hawley do hereby certify that we were each present when the above instrument was signed and witnessed the signature of the said Charles La Tour Furey, who declared the foregoing instrument to be his own free and voluntary act and deed, and to be his last will and testament that he signed the same in our presence, and at his request we signed the same as witnesses in his presence and in the presence of each other.

Dated this twenty-seventh day of February, A. D. 1902.

JOSEPH W. LATIMER,
3551 Ellis Avenue, Chicago, Illinois.
JOHN B. KNIGHT,
5634 Calumet Ave., Chicago, Ill.
ELIZABETH C. HAWLEY,
16 Astor Street, Chicago, Ill.

65 Will proved and admitted to record in open court this 8th day of Dec. A. D. 1908.

CHARLES S. CUTTING,
Probate Judge.

STATE OF ILLINOIS,
County of Cook, ss:

In the Probate Court of Cook County.

Proved and admitted to record in open court this 8th day of Dec. A. D. 1908.

GUY GUERNSEY, *Clerk.*

Filed Dec. 8, 1908.
GUY GUERNSEY, *Clerk.*

66 STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to all to whom these presents shall come, Greeting:

Know Ye, That whereas, Charles La Tour Furey late of the County of Cook and State of Illinois, died on or about the 29th day of Nov., A. D. 1908, as it is said, after having duly made and published his

last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that Carrie R. Furey, has been appointed executrix in and by the said last will and testament, to execute the same, and to the end that said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize her the said Carrie R. Furey as such executrix to collect and secure all and singular the goods and chattels rights and credits which were of the said Charles La Tour Furey at the time of his decreased, in whosesoever hands or possession the same may be found, in this State, and well and truly to perform and fulfill all such duties as may be enjoined upon her by the said will, so far as there shall be property, and the law charge-her and in general to do and perform all other acts which now or hereafter may be required of her by law.

Witness, Guy Guernsey, Clerk of the Probate Court of said County of Cook, and the seal of said Court, this 8th day of Dec. A. D. 1908.

[L. S.] GUY GUERNSEY, *Clerk.*

67 STATE OF ILLINOIS,
County of Cook, ss:

I, Guy Guernsey, Clerk of the Probate Court of Cook County, in the state aforesaid, do hereby certify that the within is a true and correct copy of the last will and testament of Charles La Tour Furey deceased, and of Letters Testamentary issued thereon, on the 8th day of Dec. A. D. 1908, to Carrie R. Furey, now in force, as it appears from the originals on file, and from the records of the Probate Court in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Probate Court, at Chicago, In said County, this 8th day of Dec. A. D. 1908.

[Seal of the Probate Court of Cook County, Illinois.
Dec. 2, 1877.]

GUY GUERNSEY, *Clerk.*

68 EXHIBIT "B."

STATE OF WEST VIRGINIA:

Certificate of Incorporation.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, do hereby certify that an Agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The American Investment Guaranty Company for the purpose of

receiving and investing money and making investment contracts to be sold on installments payments; and procuring for such of the investors in such investment contracts as may so desire policies of life insurance and of acting as agent and trustee for life insurance companies and for such investors.

Which corporation shall keep its principal office or place of business at Chicago, in the County of Cook and State of Illinois, and is to expire on the first day of July, A. D. 1904. And for the purpose of forming said corporation, we have subscribed the sum of two hundred thousand dollars, to the capital thereof and have paid in on said subscriptions the sum of twenty thousand dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to one million dollars ($1,000,000.00) in all.

69 The capital so subscribed is divided into shares of one hundred dollars ($100.00) each, which are held by the undersigned respectively as follows, that is to say: by

Oliver H. Horton, Chicago, Illinois	250	shares.
Lewis W. Pitcher " "	250	"
Edward A. Bigelow, " "	150	"
William D. Preston, " "	100	"
James L. Bigelow, " "	100	"
John P. Wilson, " "	50	"
Frank D. Lewis, Indianapolis, Indiana	250	"
Herman Kuehn, Detroit, Michigan	250	"
Thomas M. Hoyne, Chicago, Illinois	10	"
Alfred P. Bigelow, " "	10	"
Willis F. Johnson, " "	50	"
J. B. Knight, " "	530	"
	2000	shares.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 14th day of July, 1892.

O. H. HORTON.
LEWIS W. PITCHER.
EDWARD A. BIGELOW.
WILLIAM D. PRESTON.
JAMES L. BIGELOW.
THOS. M. HOYNE.
JOHN P. WILSON.
FRANK D. LEWIS.
HERMAN KUEHN.
J. B. KNIGHT.
WILLIS F. JOHNSON.
ALFRED P. BIGELOW.

70 Wherefore, the corporators named in the said Agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the First day of

July, nineteen hundred and forty-two, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this nineteenth day of July, eighteen hundred and ninety-two.

[State of West Virginia, Montano Semper Liberi.]

WM. A. OHLEY,
Secretary of State.

71 EXHIBIT B.

STATE OF WEST VIRGINIA:

Certificate.

I, Wm. H. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that on the 19th day of July, 1892, a certificate of incorporation was issued in due form, from my said office to The American Investment Guaranty Company, as appears from the records of my said office; and I further certify that, on the 28th day of January, 1898, the following resolution agreement, certificate and affidavit were produced to me, in my said office, which resolution, agreement; certificate and affidavit are in the words and figures following:

At the annual meeting of the stockholders of The American Investment Guaranty Company held at room 54, Brother Jonathan Building, Number 2 and 4 Sherman Street, Chicago, on the twelfth day of January, 1898, at eleven o'clock A. M. said meeting having been especially called for the purpose of changing the corporate name, and for increasing the purposes for which the Company was formed; all the stockholders having had due notice thereof, it was

Resolved, That the company eliminate from its corporate title the word "Investment," and that hereafter, the name of the corporation shall be "American Guaranty Company of Chicago," instead of "The American Investment Guaranty Company."

It was further Resolved, That the Company hereby adopt a new agreement, so that it shall be for the purpose of

(1) To enter into contract with individuals, firms and corporations.

(2) To act as and transact the business of Agent, and as such to (*b*) acquire, purchase, hold, sell, dispose of, pledge and otherwise deal in stocks, bonds, securities, and evidences of indebtedness or personal property, and to obtain and furnish information concerning same.

72 (*c*) To acquire by purchase, lease, mortgage or otherwise hold real estate, and to sell, transfer, mortgage, lease, or otherwise dispose of same.

(*d*) To represent individuals in their dealings with firms, corporations, associations or persons, in the transaction of any lawful business.

(3) To act as Receiving and Disbursing Agent for persons or corporations, in any business transaction.

To guarantee the contracts and obligations of Individuals, firms, corporations or associations, in any business transactions, and to do and perform all such lawful acts as may be necessary or expedient in the conduct of its said business.

We, the undersigned, Stockholders of The American Investment Guaranty Company, owning the number of shares of the capital stock of said company, set opposite our names, hereby assent to the change in the corporate name, and to the new agreement for said Company, adopted by the foregoing resolution.

Given under our hands, this 12th day of January, A. D. 1898.

PERCIVAL STEELE,	1005	shares.
JAMES L. BIGELOW,	one	"
DAVID R. LAMONT,	one	"
D. E. TOWN,	one	"
FRANK D. LEWIS,	310	"
A. P. BIGELOW,	10	"
JESSE W. ROBERTS,	one	"

We, Percival Steele, President, and David R. Lamont, Secretary of the American Investment Guaranty Company, hereby certify that the persons whose names are signed above, own the number of shares of capital stock of said company, set opposite
73 their names, respectively; that they are a majority of the stockholders of said company, and that the shares of capital stock so owned by them are a majority of the shares of capital stock of said company; and we further certify that the resolution set forth herein is a true copy of the resolution passed at the stockholders' meeting of said company, on the 12th day of January, 1898, and that the same appears upon the records of said company.

PERCIVAL STEELE,
President.

[SEAL.] DAVID R. LAMONT,
Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

I, Roscoe Linscott Roberts, a notary public in and for the county of Cook, in the State of Illinois, do hereby certify that A. P. Bigelow, James L. Bigelow, Percival Steele, D. E. Town, Jesse E. Roberts, David R. Lamont and Frank D. Lewis, stockholders of The American Investment Guaranty Company, personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged to me that they, and each of them, signed the within certificate, for the uses and purposes therein set forth, and that the said resolution therein contained was passed at a meeting of the stockholders of The American Investment Guaranty Company, held in the City of Chicago, in the County and State aforesaid, on the twelfth day of January, 1898.

Given under my hand and notarial seal this 21st day of January, 1898.

[SEAL.] ROSCOE LINSCOTT ROBERTS,
Notary Public.

74 Wherefore, I do declare the name of the said corporation from this date henceforth to be American Guaranty Company of Chicago; and I further declare the stockholders of said corporation, their successors and assigns, to be from this date until the expiration of the period named in the said certificate of Incorporation issued from my said office, on the 19th day of July, 1892, to said The American Investment Guaranty Company, a corporation by the name of American Guaranty Company of Chicago, and for the purpose set forth in the foregoing resolution and agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-eighth day of January, 1898.

[G. S.] WM. M. O. DAWSON,
Secretary of State.

75 STATE OF WEST VIRGINIA:

Certificate.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that Charles L. Furey, Vice-president of the American Guaranty Company of Chicago, a corporation created and organized under the laws of the State of West Virginia, has certified to me under his signature and the corporate seal of said corporation, that, at a general meeting of the stockholders of said corporation, regularly held pursuant to law, at the office thereof, in the city of Chicago, State of Illinois, on the 13th day of April, 1901, at which meeting a quorum of the stock and of the stockholders was present, the following resolution was duly and regularly adopted and passed to-wit:

"'Resolved, That the authorized capital of the American Guaranty Company of Chicago be reduced from ten thousand shares of the par value of 100 dollars each to five thousand shares of the par value of 100 dollars each, so that the authorized capital stock of said corporation shall be $500,000 all subscribed and paid for."

Wherefore, I do declare said decrease of the authorized capital stock as set forth in the foregoing resolution authorized by law. Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-seventh day of April, 1901.

[G. S.] WM. M. O. DAWSON,
Secretary of State.

76 (*Certificate Under Section 906, Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE.

I, C. W. Swisher, Secretary of State of the State of West Virginia, being the officer, who, under the constitution and laws of said state, is authorized to issue certificates of incorporation, of all companies incorporated under the laws thereof, and being the officer authorized to issue certificates certifying changes in and amendments to such certificates of incorporation, and being the officer who is the keeper of all the records and papers relating to the creation of such incorporated companies and of changes in and amendments to said certificates of incorporation, including the powers of attorney of such incorporated companies, appointing a resident agent or attorney in said State, and of the reports of such incorporated companies, and being the officer authorized to authenticate exemplifications of the same, do hereby certify that the foregoing and annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as said Secretary of State, and found to be a true and correct copy of the certificate of new agreement and change of name of the American Investment Guaranty Company to American Guaranty Company of Chicago, dated the 28th day of January 1898, and of the certificate of decrease, dated the 27th day of April, 1901, and recorded in the records of Corporations of my said office and that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In Testimony Whereof, I have hereunto attached my official signature and the Great Seal of the State of West Virginia, at the capitol in the City of Charleston, this 5th day of August, 1907.

[Great Seal.]

C. W. SWISHER,
Secretary of State.

77

Investment.

United States of America.

Number —.

American Guaranty Company of Chicago.

Know All Men by these Presents that whereas —— —— hereafter styled Nominator, has paid to the American Guaranty Company of Chicago —— Dollars in advance and agrees to pay a like sum on the fifth day of —— hereafter until instalments for —— years have been made.

Now, therefore the said American Guaranty Company Hereby Covenants and Guarantees that on the fifth day of —— nineteen hundred and —— upon due surrender of this Indenture, provided it is then in force, to pay unto —— —— hereafter styled Nominee, the sum of —— Dollars in Gold Coin of the United States of America, or in lieu thereof, to deliver at its home office —— registered ten years five per cent Coupon Gold Bonds of the denomination of One Thousand Dollars each, said Bonds to be in the form of the Specimen Bond herewith. The application herefor and the privileges and conditions on the third page hereof form a part of this Contract.

In witness whereof The American Guaranty Company of Chicago, has caused this Instrument to be executed in its name and by its proper officers and at its General Offices at Chicago, Ill., this — day of ——, 19—.

—— ——, *President.*

—— ——, *Secretary.*

78 *Privileges and Conditions.*

1. As security for the redemption of this Indenture, the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust, sundry moneys, or other securities such as banks and trust companies are authorized to invest in first mortgages on real estate or bonds issued by the United States of America or municipalities thereof to such an amount as shall equal in the aggregate seventy-five per cent of the surrender value of this obligation.

2. The Nominator may, after —— full years' instalments have been made, surrender this Indenture, and upon such surrender, duly made, receive a paid-up Certificate for the amount shown in the schedule endorsed hereon; the maturity date of said paid-up Certificate to be coincident with the maturity date of this Indenture; said paid up Certificate at its maturity, is payable in gold coin or in ten year five per cent interest bearing bonds of equal value, at the option of the holder.

Or this Indenture may be surrendered after —— full years' payments have been made, and upon such surrender the Company will pay in cash therefor, at its general office, a sum not less than the amount shown in the schedule hereon.

3. The Nominee, executors, administrators, legal representatives or assigns may renew this Indenture to full maturity upon the same terms and conditions as the Nominator.

Or they may surrender this Indenture and when duly surrendered receive either the paid-up Certificate or the cash value as shown in the schedule hereon.

4. This Indenture is issued with the express understanding that the Nominator may at any time during its continuance substitute any other person or persons as Nominee by giving written notice accompanied by this Indenture, such change to be duly endorsed hereon.

79 5. Should default be made at any time hereafter in the payment of any instalment due under this Contract the Company will waive such default and accept payment of said instalment, provided the amount thereof with interest thereon at five per cent per annum from date of default be tendered to it within sixty days after such default.

6. All payments provided in this obligation to be made either by or to the owner hereof are due and payable at the general offices of the American Guaranty Company in the City of Chicago, Illinois, and such payments due the Company may be made elsewhere only when exchanged for its receipt, signed by its president, vice-president, secretary, treasurer or cashier.

Loans.

7. The American Guaranty Company will loan the owner or legal holder hereof, such sum or sums, as are shown in the schedule accepting said Indenture as collateral security for said loan.

Schedule.

Amount of Paid-up Certificate to which the holder hereof shall be entitled after instalments for —— years shall have been paid.

At End of
1st year $—
2d " $—
3d " $—
4th " $—
5th " $—
6th " $—
7th " $—
8th " $—
9th " $—
10th " $—

Cash value or amount that the Company will loan the holder hereof after it has been in force —— years.

At the end of
1st year $
2d " $—
3d " $—
4th " $—
5th " $—
6th " $—
7th " $—
8th " $—
9th " $—
10th " $—

80

Amount of paid-up Certificate to which the holder hereof shall be entitled after instalments for —— years shall have been paid.

At End of
11th year $—
12th " $—
13th " $—
14th " $—
15th " $—
16th " $—
17th " $—
18th " $—
19th " $—
20th " $—

Cash value or amount that the Company will loan the holder hereof after it has been in force —— years.

At the end of
11th year $—
12th " $—
13th " $—
14th " $—
15th " $—
16th " $—
17th " $—
18th " $—
19th " $—
20th " $—

8. No agent has the right or power to modify this Indenture or bind the Company by any promise or representation, information or statement not contained herein.

L. W. PITCHER, *Secretary.*

(Endorsed on the back:) Convertible Contract, Number — of the American Guaranty Company of Chicago. Period — years. Amount $—. First Payment $—. Nominator? Residence —. This Contract at Maturity is Convertible into 5% Ten Year Gold Bonds. Principal and Interest Payable in Gold Coin at the General Offices American Guaranty Company in the City of Chicago, Illinois, U. S. A.

81 $——.

Received from the American Guaranty Company of Chicago —— Dollars in full for all claims under the within Contract

Witness:

——.

——.

82 UNITED STATES OF AMERICA.

Number —.

American Guaranty Company of Chicago.

Know All Men by these Presents, that whereas, —— —— hereinafter styled Nominator, has paid to the American Guaranty Company of Chicago the sum of —— Dollars.

Now therefore the said American Guaranty Company of Chicago, Hereby Covenants and Agrees to act as his agent and as such agent on his behalf to make the payments specified in his application copy of which appears on the third page and is with all its conditions made a part hereof.

This Contract may be renewed from time to time at the option of the holder for the period of —— years upon the payment of the sum of —— Dollars on the fifth day of —— hereafter until instalments for —— years have been made; and if renewed for the full period of —— years, the American Guaranty Company Hereby Covenants and Guarantees to pay unto —— —— of ——, hereinafter styled Nominee, on the fifth day of —— 19—. —— Dollars in gold coin of the United States of America, provided no loans or advances made hereon remain unpaid and on due surrender of this Contract.

83 In Witness Whereof The American Guaranty Company, of Chicago has caused this instrument to be executed in its name by its proper officers and at its General Offices at Chicago, Ill., this — day of ——, 19—.

CHAS. L. FUREY,
Vice-President.

——, *Secretary.*

Western Bank Note of Chicago.

84 *Privileges and Conditions.*

1. All payments provided in this obligation to be made either by or to the owner thereof are due and payable at the general offices of the American Guaranty Company in the City of Chicago, Illinois.

2. It is expressly understood that in paying insurance premiums or assessments for the applicant the Company will act solely as agent and will have no interest in and assume no liability under the insurance policies or certificates.

3. After the owner has exercised his option of renewal and this Contract has been in force for the period of two full years, then in default of the payment of the sum necessary to renew this Contract for the next period the owner may exercise any one of the following options: (*a*) To surrender this Contract at any time within ninety days after first default and receive a Paid-up Contract equal to the paid-up value at the time of such default, as shown by Schedule below, the same to mature at the maturity date of this Agreement, but no paid-up Contract shall be so issued until all advances or loans made hereon shall have been satisfied. (*b*) To surrender this Contract and receive from the Company in cash a sum not less than the full reserve value, as shown by Schedule below, less the amount of any advances or loans made hereon. (*c*) Should the owner fail to exercise either of the foregoing options, the Company will apply the reserve value as hereinafter defined to the making of the payments designated in the application herefor for such period as the reserve value will suffice to pay; and such disbursements shall operate as full payment, satisfaction, and discharge of this Contract.

4. Should the owner fail to exercise his option of renewal previous to the fifth day of —— then this Contract will be ter-
85 minated without notice and all payments provided for will cease.

5. Should the payments designated in the application herefor at any time be less than the amount stated in said application, the difference shall be credited to the owner at the end of the current year and paid over to the owner upon demand and, if not sooner paid, shall be added to the principal sum due whenever this Contract is terminated.

6. If at any time the payments designated in said application shall require a sum in excess of the amount herein provided to be made, the Company will advance such additional amount up to not exceeding the then present reserve value of this Contract, such advance payments to be considered as a loan which may be refunded, or shall constitute a part payment of any moneys to become due from the Company.

7. It is understood and agreed that at maturity the Nominator may at his option leave with the Company so much of the maturity value of this Contract as shall at five per cent per annum equal the sum then required for disbursements, whereupon the Company will continue to act as agent until released from making said disbursements by surrender of this Contract, at which time the fund so remaining, less any loans or advances then unpaid, will be paid to the

Nominator; or at any time prior to maturity when the accumulated net reserve hereon equals an amount on which the interest at the rate of five per cent per annum shall equal the sum then required for disbursements, the Company will upon application in writing waive further payment of instalments and continue to act as agent until relieved from making such disbursements by surrender
86 of this Contract, at which time said reserve and any accumulations less the amount of any advances or loans remaining unpaid hereon, will be paid to the Nominator.

8. The nominee, executors, administrators, legal representatives or assigns may renew this Contract to full maturity upon the same terms and conditions as the Nominator. This Contract is issued with the understanding that the Nominator may at any time during its continuance substitute any other person or persons as Nominee by giving written notice, duly acknowledged accompanied by this Contract. Such change to be duly indorsed hereon. The Company, however, will assume no responsibility by reason of consenting to any assignment.

9. As security for the redemption of this Contract the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust with an institution legally empowered to act as such trustee, sundry moneys or other securities such as banks and trust companies invest in, first mortgages on real estate, or bonds issued by the United States of America or municipalities thereof, which shall constitute the reserve under this Contract to such an extent as shall equal in the aggregate not less than seventy-five per cent of the reserve value.

87 10. No agent has the right or power to modify this Contract or bind the Company by any promise or representation, information or statement not contained herein.

Loans.

11. The American Guaranty Company will loan the owner or legal holder hereof, such sum or sums which shall equal the surrender value of this Contract, accepting said Contract as collateral security for said loan.

88 SCHEDULE.

Paid-up values to which the holder hereof shall be entitled.		Reserve value or amount that the company will LOAN the holder hereof.	
At end of		At end of	
2d year.....	$.....	2d year.....	$.....
3d "	$.....	3d "	$.....
4th "	$.....	4th "	$.....
5th "	$.....	5th "	$.....
6th "	$.....	6th "	$.....
7th "	$.....	7th "	$.....
8th "	$.....	8th "	$.....
9th "	$.....	9th "	$.....
10th "	$.....	10th "	$.....

Paid-up values to which the holder hereof shall be entitled.	Reserve value or amount that the company will loan the holder hereof.
At end of	At end of
11th year..... $.....	11th year..... $.....
12th " ..... $.....	12th " ..... $.....
13th " ..... $.....	13th " ..... $.....
14th " ..... $.....	14th " ..... $.....
15th " ..... $.....	15th " ..... $.....
16th " ..... $.....	16th " .... $.....
17th " ..... $.....	17th " ..... $.....
18th " .... $.....	18th " ..... $.....
19th " ..... $.....	19th " ..... $.....
20th " ..... $.....	20th " ..... $.....

L. W. PITCHER, *Secretary.*

Examined by —— ——.

89 *Application to American Guaranty Company of Chicago.*

I hereby make application for a Service Contract whereby you will, as my agent, assume the payment (as the same may become due and upon due notice) of such sum or sums as are necessary to maintain my Insurance for the perior of — months in the Companies, Associations or Societies enumerated below, of which I am a member in good standing at this date and which now require payments aggregating $— per annum. The Contract to mature on the 5th day of —— Nineteen Hundred and — for $— for which I have this day paid the soliciting agent the sum of $—, same being the first — payment thereon. Future payments to be made ——, at the same rate, to continue only so long as I may desire to keep the Contract in force, it being understood and agreed that after payments for — years have been made, no further payments will be required.

I nominate —— —— of —— as the person to whom the value of the Contract shall be paid on the 5th day of —— 19—, and in the event that I shall for any cause at any time during the life of said Contract become incapacitated from receiving benefits of the agency so to be created I authorize and direct the Company to extend to my said Nominee all the benefits, rights and privileges in said Contract enumerated.

90 I reserve the right to cancel or change these instructions and to substitute any other person or persons as nominee, and to surrender the Contract and receive the benefits provided therein.

The Contract is not to be regarded as binding upon the Company until the first installment on same has been paid in cash.

Dated at —— this — day of —— 190–.

(Sign here) —— ——.

Post Office Address ——.
City and State ——.
Occupation ——.

Form of Contract to be Issued.

—— ——, Agent.

I am a member of the following Societies or Associations, to whom payments are to be made in my behalf, until further instructions.

Name of society.	Name and number of subordinate body.	Name and address of collector to whom remittances are to be made.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

91

Amount of each assessment.	Assessment has been paid for month of—	Company to remit for assessment due —	Amount of quarterly dues.
.....	.....	.....	$.....
.....	.....	.....	Company to remit for quarter ending.
.....	.....	.....	.....

I am a policy holder in the following Companies, to whom payments are to be made in my behalf, until further instructions:

Name of company.	Name and address of agent to whom remittances are to be made.	Amount of premium.
.....	.....	$.....
.....	.....	.....
.....	.....	$.....

How paid.	When is next payment due.
.....	.....

92 *Scrip Contract*

No. —.

Of the American Guaranty Company of Chicago.

Period..... ..... years.

Amount $.....

First payment $.....

Nominator.....

Residence.....

93 $..... ... .190...

Received from the American Guaranty Company of Chicago, ...dollars in full for all claims under the within contract..... ....

Witness.....

94 Dollars $10,000. Number A.

American Guaranty Company of Chicago

Hereby covenants and guarantees to pay to the order of the applicant an annual income of One Thousand Dollars for the period of ten years, being in all the sum of Ten Thousand Dollars payable only upon presentation and surrender of the income coupons hereto attached as they severally become due, subject to the conditions set forth therein, the last coupon to be accompanied by this contract for cancellation; or upon presentation and surrender of this contract with all coupons attached there will be paid Seven Thousand Five Hundred Dollars in Gold Coin on the fifth day of —— 192–.

This Contract is made in consideration of the application of —— —— of —— —— and the payment of Thirty Dollars due —— 5th, 190– the receipt of which is hereby acknowledged, and the further payment of the same amount to be made on the fifth day of each and every month thereafter until payments for 180 months shall have been made in all, after which the coupons hereto attached will be countersigned upon presentation.

The privileges, conditions and schedule printed on the third page hereof, together with the application herefor; are made a part of this contract.

In Witness Whereof, the American Guaranty Company of Chicago has caused this contract to be executed in its name and by its proper

officers and at its general offices at Chicago, Illinois, this — day of —— 190–.

CHAS. L. FUREY,
Vice President.

Canceled:
—— ——, *Secretary.*

Canceled.

95 $1000 $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:
—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:
—— ——, *Treasurer.*

96 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all

payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

97 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

98 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

99 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand

Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

No. A. L. W. PITCHER, *Secretary.*

Countersigned:

—— ——, *Treasurer.*

100 Privileges and Conditions.

SECTION 1. As security for the redemption of this contract the American Guaranty Company of Chicago, (hereafter styled the Company) covenants and guarantees that it will keep on deposit in trust with an institution legally empowered to act as such trustee, cash, first mortgages, on real estate, bonds issued by the United States of America or municipalities thereof, and such other securities as banks and trust companies invest in to an amount equal to the cash loan value hereunder, less the amount of any unpaid loans hereon.

SECTION 2. At any time after this contract has been in force two (2) or more full years, provided all payments previously due have been made, it may be exchanged for a Paid-up Income Contract for the amount specified in the Paid-up Income Schedule indorsed hereon. The coupons forming a part of any Contract for which this may be exchanged will be payable at the same time and in the same manner as the coupons attached hereto would have been paid had this contract been continued to maturity.

SECTION 3. Should this Contract be exchanged for a Paid-up Income Contract and any loans made on this Contract remain unpaid at the time of such exchange, an assignment of the Paid-up Income Contract as full collateral security will be accepted.

101 SECTION 4. After payments have been made covering a period of twelve (12) months the Company upon request for the purpose only of making not more than twelve (12) monthly payments in advance will loan the amount required.

SECTION 5. At any time the Company will loan the legal holder in cash any amount not exceeding the cash loan value of any year for which all payments have been made, less the amount of any unpaid loans hereon.

SECTION 6. After payments for two (2) or more full years have been made the Company will loan the amount stipulated in the Advance Loan Schedule less one year's interest, and the amount of any unpaid loans, provided twelve (12) monthly payments in advance are made at the time the loan is secured.

SECTION 7. The assignment of this Contract will be accepted as full collateral security for any loan made hereon.

SECTION 8. Any loan made hereon will be renewed at maturity upon request.

SECTION 9. Interest on loans and on renewals of same, will be payable in advance, but any part of the sum borrowed may be re-

paid at any time previous to maturity, interest being retained only for the actual time the loan remains unpaid.

SECTION 10. The amount of all loans remaining unpaid will be deducted from any settlement made hereunder.

102 SECTION 11. Upon surrender of this contract for cancellation, at any time after it has been in force two (2) or more full years, the Company will pay to the legal holder an amount equal to the cash loan value at the end of the last year covering which all payments have been made.

SECTION 12. The payments provided in this Contract to be made by or to the owner are due and payable at the general offices of the Company; and such payments due the Company, if made elsewhere will not be binding upon the Company until a receipt is issued for same signed by its president, vice-president, secretary, treasurer or cashier.

SECTION 13. Should the stipulated payments hereunder be discontinued before the period of twenty-four (24) months has been covered, all moneys previously paid shall remain the property of the Company, but the amount of same will be allowed as a credit on a new Contract for a like amount provided the legal holder hereof within one year from the time of such discontinuance applies for said new Contract and makes at least one monthly payment in advance. Failure to make such application and payment within the time specified shall work an unconditional forfeiture of this Contract and all payments made hereon.

103 SECTION 14. At the expiration of one hundred eighty (180) months, all payments having been made for that time, at the option of the legal holder this Contract with all coupons attached may be surrendered for cancellation; and upon such surrender duly made the Company will pay to the legal holder seventy five hundred dollars ($7,500.00) in gold coin; or it may be exchanged for a Paid-up Income Contract for eleven thousand, two hundred fifty dollars ($11,250.00) payable in fifteen (15) equal annual instalments of seven hundred fifty dollars ($750.00) each; or it may be exchanged for a Paid-up Income Contract for twelve thousand five hundred dollars ($12,500.00) payable in twenty (20) equal annual instalments of six hundred twenty-five dollars ($625.00) each.

SECTION 15. At the maturity of any coupon hereunder, or at the time any payment is due under the terms of any contract for which this Contract may be exchanged, upon due surrender of the remaining Coupons or Contract providing for payments the Company will pay to the legal holder thereof the then cash value according to its present published table of conversion rates.

SECTION 16. Should the applicant for this Contract die and his or her heirs or legal representatives not desire to avail themselves of any of the privileges originally extended, the Company will upon request made within sixty days after said decease waive the conditions of the Contract and upon surrender of same with all coupons attached permit the withdrawal of the full amount of all moneys paid hereon.

104

Paid-up income schedule referred to in section 2.		Cash loan value referred to in sections 1, 5, and 11.		Advance loan schedule referred to in section 6.	
At the end of		At the end of		At end of	
2nd year	$ 1333.32	2nd year	$ 316.80	2nd year	$ 720.00
3rd "	$ 2000.00	3rd "	$ 655.20	3rd "	$1080.00
4th "	$ 2666.66	4th "	$ 993.60	4th "	$1440.00
5th "	$ 3333.32	5th "	$1332.00	5th "	$1800.00
6th "	$ 4000.00	6th "	$1685.80	6th "	$2176.38
7th "	$ 4666.66	7th "	$2064.84	7th "	$2579.62
8th "	$ 5333.32	8th "	$2475.74	8th "	$3016.74
9th "	$ 6000.00	9th "	$2927.34	9th "	$3497.16
10th "	$ 6666.66	10th "	$3429.74	10th "	$4031.62
11th "	$ 7333.32	11th "	$3995.30	11th "	$4633.30
12th "	$ 8000.00	12th "	$4638.30	12th "	$5317.34
13th "	$ 8666.66	13th "	$5376.30	13th "	$6102.44
14th "	$ 9333.32	14th "	$6230.70	14th "	$7011.38
15th "	$10000.00	15th "	$7500.00	15th "	$7978.72

SECTION 17. The Company will assume no responsibility by reason of consenting to any assignment of this Contract.

SECTION 18. No agent has the right or power to modify this Contract or bind the Company by any promise or representation, information or statement not contained herein.

L. W. PITCHER, *Secretary.*

Canceled.

105 (Endorsed on the back:) Number A. American Guaranty Company of Chicago. $10,000. (Ten Year) Income Contract. Received from the American Guaranty Company of Chicago — Dollars for all claims under the within contract.

Assignment.

For value received I hereby assign, transfer and set over to —— of —— the within contract and all rights, privileges and benefits accruing thereunder.

Dated at —— this — day of —— 19—

Witness:

——— ———,
Applicant.

106 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

I, Ira H. Motteshead, Clerk of the Circuit Court for said County and in said State, do hereby certify that the foregoing is a true copy as appears on file in my office in the cause of Carrie Rebecca Furey, et als. against American Guaranty Company of Chicago.

Given under my hand and the seal of said Court, this the 1st day of February, 1909.

[Seal Circuit Court Kanawha County, West Virginia.]

IRA H. MOTTESHEARD, *Clerk.*

107 STATE OF WEST VIRGINIA,
Kanawha County, To wit:

I, S. C. Burdett, sole judge of the Circuit Court in and for the County of Kanawha, in the state of West Virginia, do certify that Ira H. Mottesheard, by whom the aforesaid record and certificate were made and given, and who in his own handwriting has thereunto subscribed his name, and has thereto affixed the seal of the Circuit Court in and for the County of Kanawha, in the state of West Virginia, was at the time of so doing, and now is clerk of said Circuit Court in and for said County, to all whose acts as such full faith and credit are due and given, and that the said record and certificate are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand this first day of February, in the year of our Lord one thousand nine hundred and nine.

S. C. BURDETT.

STATE OF WEST VIRGINIA,
Kanawha County, To wit:

I, Ira H. Mottesheard, Clerk of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, do hereby certify that the Honorable S. C. Burdett, by whom the foregoing certificate was made and given, and who in his own proper handwriting has thereunto subscribed his name, was at the time of so doing and now is sole Judge of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, duly commissioned and qualified, to all whose acts as such full faith and credit are due and given, as well as in courts of adjudicature as elsewhere.

In Testimony whereof I have hereunto set my hand and the seal of said Circuit Court, this first day of February, A. D. 1909.

[Seal Circuit Court Kanawha County, West Virginia.]

IRA H. MOTTESHEARD.

108 (At a Circuit Court for Kanawha County, held at the Court House thereof, on the 1st day of February, 1909.)

STATE OF WEST VIRGINIA,
County of Kanawha:

In the Circuit Court of Kanawha County.

CARRIE REBECCA FUREY, Individually and as Executrix, etc., and CAROLINE LA TOUR FUREY
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Now comes on to be heard the application of the complainants in the above entitled cause, for a decree of dissolution of the American Guaranty Company, a corporation organized and existing under the laws of the state of West Virginia, and for the appointment of a receiver of said American Guaranty Company, and the court having seen and inspected the bill of complaint herein, and the joinder therein as plaintiffs by Lewis L. Pitcher and Jas. L. Bigelow, which bill and joinder are here ordered to be filed, and it appearing that the complainants represent more than one-third in interest of the stockholders of the American Guaranty Company and that all the stockholders have notice hereof and consent to the entry of this decree, by writing here filed, and that the American Guaranty Company has entered its appearance herein and has due notice hereof, the court finds that the prayer of the bill of complaint herein should be granted, and

It is hereby ordered, adjudged and decreed that the said American Guaranty Company, be and it hereby is dissolved, and V. L. Black, of Charleston, West Virginia, is hereby appointed receiver of all and singular the property and assets of the American Guaranty
109 Company, of every description within the jurisdiction of this court, to have and to hold and to administer the same under the orders and direction of this court. All the creditors of said American Guaranty Company are hereby enjoined from interfering or meddling with any of the property of said American Guaranty Company. The receiver is hereby directed to take all and such steps as may be necessary to secure possession of the property of the American Guaranty Company within the jurisdiction of this court, and to apply to this court for any and such further directions as to him may seem necessary, but before entering upon the discharge of his duties in this behalf said receiver shall give bond with approved security before the clerk of this court in the penalty of $5,000.00, conditioned according to law.

STATE OF WEST VIRGINIA,
County of Kanawha, ss:

I, Ira H. Mottesheard, clerk of the Circuit Court for said county and in said state, do hereby certify that the foregoing is a true copy of the record of said court.

Given under my hand and the seal of said court, this, the 1st day of February, 1909.

[Seal Circuit Court Kanawha County, West Virginia.]

IRA H. MOTTESHEARD, *Clerk.*

110 STATE OF WEST VIRGINIA,
Kanawha County, To wit:

I, S. C. Burdett, sole judge of the Circuit Court in and for the County of Kanawha, in the state of West Virginia, do certify that Ira H. Mottesheard, by whom the aforesaid record and certificate were made and given, and who in his own hand writing has thereunto subscribed his name, and has thereto affixed the seal of the circuit Court in and for the County of Kanawha, in the state of West Virginia, was at the time of so doing, and now is, Clerk of said Circuit Court in and for said County, to all whose acts as such full faith and credit are due and given, and that the said record and certificate are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand this first day of February, in the year of our Lord one thousand nine Hundred and nine.

S. C. BURDETT.

STATE OF WEST VIRGINIA,
Kanawha County, To wit:

I, Ira H. Mottesheard, clerk of the Circuit Court in and for the County of Kanawha, in the state of West Virginia, do hereby certify that the Honorable S. C. Burdett, by whom the foregoing certificate was made and given, and who in his own proper handwriting has thereunto subscribed his name, was at the time of so doing, and now is, sole judge of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, duly commissioned and qualified, to all whose acts as such full faith and credit are due and given, as well *as* in courts of adjudicature as elsewhere.

In testimony whereof, I have hereunto set my hand and the seal of said Circuit Court, this first day of February, A. D. 1909.

[SEAL.] IRA H. MOTTESHEARD.

111 *Bond.*

Know all men by these presents, That we, V. L. Black, principal, and J. F. Brown, surety, are held and firmly bound unto the State of West Virginia in the just and full sum of five thousand dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this 1st day of Feb'y, 1909.

The condition of the above obligation is such, that whereas, the above bound, V. L. Black, has been by an order entered by the Circuit Court of Kanawha County, West Virginia, in the Chancery Cause pending in said court of Carrie Rebecca Furey et als. against American Guaranty Company of Chicago, on this 1st day of February, 1909, appointed Special Receiver of all and singular the property and assets of the American Guaranty Company of every description within the jurisdiction of this court, to have and to hold

and to administer the same under the orders and directions of this court.

Now, therefore, if the said V. L. Black shall well and truly account for and pay over all moneys that shall come into his hands as receiver and shall faithfully perform his duties as such under this or any future order of this court, then this obligation to be void, else to remain in full force.

V. L. BLACK. [SEAL.]
J. F. BROWN. [SEAL.]

Acknowledged before me and approved Feb'y 1st, 1909.

IRA H. MOTTESHEARD, *Clerk.*

112 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

I, Ira H. Mottesheard, Clerk of the Circuit Court for said County and in said state, do hereby certify that the foregoing is a true copy as appears on file in my office in the cause of Carrie Rebecca Furey et als. against American Guaranty Company of Chicago.

Given under my hand and the seal of said Court, this the 1st day of February, 1909.

[SEAL.] IRA H. MOTTESHEARD, *Clerk.*

113 STATE OF WEST VIRGINIA,
Kanawha County, To-wit:

I, S. C. Burdett, sole judge of the Circuit Court in and for the County of Kanawha, in the state of West Virginia, do certify that Ira H. Mottesheard, by whom the aforesaid record and certificate were made and given, and who in his own hand writing has thereunto subscribed his name, and has thereto affixed the seal of the Circuit Court in and for the County of Kanawha, in the state of West Virginia, was at the time of so doing, and now is, Clerk of said Circuit Court in and for said County, to all whose acts as such full faith and credit are due and given, and that the said record and certificate are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand this first day of February, in the year of our Lord one thousand nine Hundred and nine.

S. C. BURDETT.

STATE OF WEST VIRGINIA,
Kanawha County, To-wit:

I, Ira H. Mottesheard, clerk of the Circuit Court in and for the County of Kanawha, in the state of West Virginia, do hereby certify that the Honorable S. C. Burdett, by whom the foregoing certificate was made and given, and who in his own proper handwriting has thereunto subscribed his name, was at the time of so doing, and now is, the sole judge of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, duly commissioned and

qualified, to all whose acts as such full faith and credit are due and given, as well *as* in courts of adjudicature as elsewhere.

In testimony whereof, I have hereunto set my hand and the seal of said Circuit Court, this first day of February, A. D. 1909.

[SEAL.] IRA H. MOTTESHEARD.

(Endorsed:) Filed April 1, 1909, H. S. Stoddard, Clerk.

114 And on to-wit: the second day of February, 1909, come American Guaranty Company of Chicago, by its solicitor and filed in the Clerk's office of said court in said entitled cause its certain Consent and answer to the bill of complaint in words and figures following to-wit:

Consent of American Guaranty Company, etc.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and in Her Own Right, and Caroline La Tour Furey, Complainants.

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Now comes said American Guaranty Company of Chicago, and confesses each and all of the allegations contained in the bill of complaint filed herein to be true, and that said complainants are entitled to the relief therein prayed, and consents to the appointment forthwith by this Honorable Court of a receiver of all the property, assets and effects of every description of said American Guaranty Company of Chicago, and to the entry of such further orders and decrees from time to time in the premises as the court may deem proper.

AMERICAN GUARANTY COMPANY OF CHICAGO.
By FREDERICK M. STEELE, *President.*
AMERICAN GUARANTY COMPANY OF CHICAGO.
By GORHAM & WALES, *Its Solicitors.*

Attest:
L. W. PITCHER, *Sec'y.*
[CORPORATE SEAL.]

(Endorsed:) Filed Feb. 2, 1909. H. S. Stoddard, Clerk.

115 And on the same day to-wit: the second day of February, 1909, being one of the days of the regular December term of said Court, 1908, in the record of proceedings thereof, in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Order of February 2, 1909, Appointing Receiver.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

TUESDAY, *February* 2, 1909.

Present: Hon. Christian C. Kohlsaat, Circuit Judge.

29336.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and in Her Own Right, and Caroline La Tour Furey,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO.

Upon reading and filing the verified bill of complaint in this cause, together with the exhibits in support thereof, and the answer of said American Guaranty Company of Chicago, confessing the allegations contained in the bill of complaint filed herein to be true, and the said complainants are entitled to the relief therein prayed, and on motion of the counsel for complainants, and counsel for defendant appearing and consenting thereto, it is

Ordered by the court that Edwin A. Potter of Chicago, in the County of Cook, in the State of Illinois, be and he is hereby appointed Receiver of this court, of all and singular the property of said American Guaranty Company of Chicago of every description, and of all moneys, claims in action, credits, bonds, stocks and other assets of every kind, and of all other property, real, personal and mixed, held or possessed by said company, or to which said
116 Company is entitled, or in which it has any interest to have and to hold the same as an officer of and under the orders and directions of this Court.

The said Receiver is hereby authorized and directed to take immediate possession of all and singular the property, assets and effects above described, and each and every of the officers, directors, agents and employés of said American Guaranty Company of Chicago, and all other individuals, firms and corporations are hereby required and commanded to forthwith on demand of said receiver turn over and deliver to such receiver any and all property, assets and effects of every kind and description, books, papers and vouchers under their or any of their control and belonging to or to which said American Guaranty Company of Chicago is entitled, or in which it has any interest, and the said American Guaranty Company of Chicago, and its officers are hereby directed immediately to execute and deliver to the said receiver a deed or deeds of all real estate now owned or possessed by said company, and transfers and assignments of all the property assets and effects of said Company.

Said receiver is hereby fully authorized to institute and prosecute all such suits as he may deem necessary or proper and to defend all

such actions against him as such receiver, and also to appear in and conduct the prosecution or defense of any suit or suits against said Company.

Said receiver is hereby authorized and directed to employ such counsel, attorneys, solicitors, agents, clerks and assistants as he may deem necessary or proper in the discharge of his duties as such Receiver.

117 Said receiver is hereby authorized and directed to deposit all moneys coming into his hands as such receiver in The American Trust & Savings Bank, of Chicago, Illinois, and such other bank or banks as the court may from time to time direct.

All creditors and contract-holders of said American Guaranty Company of Chicago are hereby enjoined from in any way intermeddling, by suit or otherwise, with all or any of the property, assets and effects hereby directed to be turned over to said receiver, and all officers, directors, agents and employés of said American Guaranty Company of Chicago, are hereby enjoined from interfering with or disposing of all or any of said property, assets, and effects of said American Guaranty Company of Chicago, in any way, except to transfer, convey and turn over the same to said Receiver.

Said Receiver is hereby required to file with the clerk of the court a proper bond in the penal sum of fifty thousand (50,000) *thousand* dollars, with The Empire State Surety Company of New York, as surety, and said receiver now here appears in open court and accepts his said appointment as receiver herein, and now here presents said bond in the penal sum of fifty (50) thousand dollars with said surety, which said Bond the court now here finds to be proper in form and to have been properly executed, and now here approves the same.

118 And on to-wit: the eighth day of February, 1909, come A. E. Cross, Joseph F. Leaning, L. K. Torbet and A. E. Taylor, by their solicitor and filed in the clerk's office of said Court a certain petition for leave to intervene in words and figures following to-wit:

Petition of A. E. Cross et al. for Leave to Intervene.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. Gen. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and Also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

To the Honorable the judges of said Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division, in Chancery Sitting:

Now come A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor who respectfully represent unto your Honors that each of them is the holder of a contract with the American Guaranty Company of Chicago, the defendant in the above entitled cause, and that they constitute a Contract-holders' Committee of
119 said American Guaranty Company of Chicago. Your petitioners pray that they may be allowed to intervene in the above entitled cause and be made parties hereto under the name of Contract-Holders' Committee.

And your petitioners will ever pray.

A. E. CROSS,
JOSEPH F. LEAMING,
L. K. TORBET,
A. E. TAYLOR,
By GORHAM & WALES,
Their Sol'rs.

GORHAM & WALES,
Sol'rs for Petitioners.

STATE OF ILLINOIS,
County of Cook, ss:

L. K. Torbet being first duly sworn deposes and says that he is one of the petitioners in the above and foregoing petition; that he has read the same and knows the contents thereof and that the facts therein stated are true.

L. K. TORBET.

Subscribed and sworn to before me, this 8th day of February, A. D. 1909.

JOHN H. R. JAMAR,
Chief Deputy Clerk.

(Endorsed:) Filed Feb. 8, 1909. H. S. Stoddard, Clerk.

120 And on to-wit: the eighth day of February, 1909, there was filed in the clerk's office of said Court, in said entitled cause a certain notice in words and figures following to-wit:

Notice.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. Gen. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

To Levy Mayer, Esq., solicitor for the receiver of American Guaranty Company of Chicago and George S. Steere, Esq., solicitor for complainants.

GENTLEMEN: You and each of you are hereby notified that on Monday, the eighth day of February, A. D. 1909, at ten o'clock A. M. or as soon thereafter as counsel can be heard, we will appear before his Honor Judge Christian C. Kohlsaat, in the room then occupied by him as a court room in the Federal Building of the city of Chicago and ask leave to file in the above entitled cause the intervening petition of Messrs. A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting a Committee of contract-holders of the American Guaranty Company of Chicago, and ask for an order in accordance with the prayer of said petition, a copy of which is hereto attached, at which time and place you may appear if you see fit.

GORHAM & WALES.
Solicitors for said Intervenors.

121 Received a copy of the above notice this 6th day of February A. D. 1909.

LEVY MAYER.
Solicitor for Receiver of American Guaranty Company of Chicago.
GEORGE S. STEERE.
GEORGE S. STEERE.
Solicitor for Complainants.
Per S. R. S.

(Endorsed:) Filed Feb. 8, 1909. H. S. Stoddard, Clerk.

122 And on the same day to-wit: the eighth day of February, 1909, being one of the days of the regular December term of said Court, 1908, in the record of proceedings thereof, in said entitled cause before the Hon. C. C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Order of February 8, 1909, Giving A. E. Cross et al. Leave to Intervene.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO.

Upon motion of counsel for A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting a committee of contract-holders of said American Guaranty Company of Chicago, counsel for the receiver and counsel for all other parties in interest being now in court and having had due notice hereof, leave is hereby given to said A. E. Cross, et al. constituting said committee of contract holders, to file, and they now file herein their petition of intervention, and leave is hereby given to said A. E. Cross, et al. to become and they are hereby made parties as intervenors herein.

123 And on to-wit: the thirteenth day of February, 1909, come Edwin A. Potter, as Receiver and filed in the clerk's office of said court in said entitled cause his certain Petition to require the Royal Trust Company to turn over funds in its hands. Said Petition is in the words and figures following to-wit:

124 In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. G. No. 29336.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Petition of Edwin A. Potter, Receiver, vs. Royal Trust Company to Require Latter to Turn Over Funds in its Hands.

To the Honorable the Judges of said United States Circuit Court:

Now comes Edwin A. Potter, Receiver herein and respectfully submits the following:

1. That on February 1, 1909, the American Guaranty Company of Chicago, hereinafter called the Guaranty Company, was duly dissolved by a decree of dissolution duly entered in the Circuit Court of Kanawha County, West Virginia, in proceedings duly instituted for that purpose, in which proceedings said Circuit Court of Kanawha County had and has jurisdiction of all of the parties and of the subject matter; that said decree of dissolution was and is a final decree and is unmodified, unappealed from and unreversed, and is in full force and effect; that the said dissolution proceedings, including the decree, are referred to in the bill of complaint herein.

125 2. That your petitioner, said Edwin A. Potter, was duly appointed receiver herein of all of the property, assets and effects of said Guaranty Company on February 2, 1909, and on said date accepted said appointment, duly took the oath of office and duly gave bond, as required by said order of appointment, which bond was, on said date approved by this court, and since said date said petitioner has been and now is duly acting as receiver herein of all of the property, assets and effects of said Guaranty Company; that said Guaranty Company has no property, assets or effects whatever in the State of West Virginia and had none therein at the time of the entry of said decree of dissolution; that pursuant to said decree appointing said petitioner receiver herein, said Guaranty Company, by deed dated February 2, 1909, duly executed, acknowledged and delivered, duly conveyed and transferred to your petitioner, as receiver, all and singular the property of said Guaranty Company of every description, and all moneys, claims in action, credits, bonds, stocks and other assets of every kind, and all other property, real, personal and mixed, held or possessed by said Guaranty Company, or to which said Company is entitled, or in which it has any interest.

3. That at the time of your petitioner's appointment herein, said Guaranty Company had issued and there were then and still are outstanding, in full force and effect, contracts of a contingent or nominal value of, to-wit, $15,825,000., divided into, to-wit, $3,254,000. of investment and service contracts, and, to-wit, $12,571,000. income contracts; that in addition to the foregoing contracts, there were at said time and still are outstanding, in full force and effect, the following:

(*a*) To-wit, 516 paid up income contracts which had theretofore been issued for regular income contracts, and which paid up

126 income contracts then had and still have a contingent or nominal value of, to-wit, $206,400, and a total present net value, by their terms, of, to-wit, $35,892.04.

(*b*) To-wit, 303 paid up service and investment contracts, which had theretofore been issued for regular service and investment contracts, and which paid up service and investment contracts then had and still have a nominal or contingent value, of, to-wit $151,500., and a total present net value, by their terms, of, towit, $33,392.

(*c*) That included in said $15,825,000. of investment, service and income contracts there are, to-wit, 25 miscellaneous contracts of a contingent or nominal value of, to-wit, $43,310, and a total present

net value, by their terms, of, to-wit, $16,523.74; that said 25 contracts were issued prior to the creation of the deposit or trust fund hereinafter referred to.

Said investment and service contracts provide that as security for their redemption said Guaranty Company shall have and keep on deposit, in trust, moneys and other securities to such an amount as shall at the time equal in the aggregate 75 per cent. of the cash value of said contracts, as shown by the schedules appended thereto; that said income contracts issued prior to 1906 contain similar terms, and said income contracts issued in that year and since provide that moneys and other securities so to be kept on deposit, in trust, shall be in an amount equal to the cash loan value specified therein. That many, if not most of said contracts provide that the amount of the security so to be kept on deposit, in trust, shall be diminished to the extent of the amount of any unpaid loans made by said Guaranty Company on said contracts respectively; that irrespective of said provision with reference to said loans, in all instances where said Guaranty Company made loans to its contract-holders, they were required to and did give their respective notes, which notes
127 contain a provision authorizing the release from said fund and its payment to said Guaranty Company of the amounts loaned by said Guaranty Company, as evidenced by said notes; that said Guaranty Company loaned to various of its contract-holders large sums of money, secured by their respective contracts, and that said loans now outstanding and owing by such contract-holders to said Guaranty Company aggregate, to-wit, $417,986.03, all of which loans are evidenced by the notes of the contract-holders, a form of which note is hereto attached as Exhibit "A," and by reference thereto made part hereof; that specimen copies of said investment, service and income contracts, which as aforesaid contain provisions providing for such deposit, trust or reserve funds, are hereto attached, as Exhibits "B," "C" and "D," and by express reference thereto made part hereof.

4. That pursuant to the provisions so contained in said contracts, said Guaranty Company did deposit and now has on deposit with the Royal Trust Company, a corporation organized under the laws of the State of Illinois, having its principal office in Chicago, a fund consisting of cash and other securities of the aggregate face value of, to-wit, $566,719.50, and itemized statement of which cash and securities, as furnished to your petitioner by said Royal Trust Company on February 3, 1909, is as follows:

"Mr. Edwin A. Potter, Receiver American Guaranty Company, 171 La Salle Street, Chicago.

DEAR SIR: Complying with your telephone request of to-day, we herewith hand you a list of the securities and cash on deposit with us as Trustee of the Reserve Fund of the American Guaranty Company:

128 *Bonds.*

5 United States 3% Bonds	$5,000.00
2 United States 3% Bonds	40.00
1 United States 3% Bond	500.00
31 United States 3% Bonds	3,100.00
5 6% 1st Mtg. Spalding Mfg. Co. bonds	5,000.00
1 5% 1st Mtg. Chicago Auditorium Ass'n bond	1,000.00
25 4% Consolidated Pere Marquette R. R. Co. bonds	25,000.00
1 3½% Water Loan Commonwealth of Massachusetts Bond	1,000.00
1 4½% Funding & Real Estate Mtg. Western Union Telegraph Co. Bond	1,000.00
1 4% Gold Debenture, New York & Hudson River Rd. Co. Bond	1,000.00
1 4% Lake Shore & Michigan Southern Ry. Co. Bond	1,000.00
1 3½% 1st Mtg. Baltimore & Ohio R. R. Co. S. W. Division, Bond	1,000.00
1 4% 1st Mtg. Atchison, Topeka & Santa Fe Ry. Co. (Eastern Okla. Division) Bond	1,000.00
1 3½% Guaranteed Gold Trust Certificate of the Pennsylvania Co.	1,000.00
1 4% 5.20 Collateral Trust, Louisville & Nashville Rd. Co. Bond	1,000.00
1 4% Erie Rd. Co., Penn.'s Collateral Bond	1,000.00
9 3½% Consolidated Mtg. New York Central & Hudson River Co., Gold Bonds	9,000.00
5 4% 1st Mtg. St. Louis, Iron Mountain & Southern Ry. Co. Gold Bonds	5,000.00
5 4% General Mtg. Atchison, Topeka & Santa Fe Ry. Co. 100 year Gold Bonds	5,000.00
1 4% 1st Mtg. Chicago Junction Rd. Co. 40 year Gold Bond	1,000.00
5 4% First & Refunding Mtg. Chicago, Rock Island & Pacific Ry. Co. Gold Bonds	5,000.00
5 4% Sanitary District of Chicago Municipal Bonds	5,000.00
10 4% South Park Commissioners' (Chicago) 8 years Park Bonds	10,000.00
129 4 5% Dakota & Great Southern Ry. Co. 30 year Gold Bonds	4,000.00
16 3½% 1st Mtg. Illinois Central Rd. Co. Purchased Lines, Gold Bonds	16,000.00
5 6% 1st Mtg. City of Lincoln Gas Co. Gold Bonds	5,000.00
5 5% 1st Mtg. Topeka Ry. Co. Gold Bonds	5,000.00
10 6% 1st Mtg. United Gas Co. Gold Bonds	5,000.00
10 5% 1st & Refunding Mtg. Peoria Ry. Co. Gold Bonds	10,000.00
5 4% Lake Shore & Michigan Southern Ry. Co. 25 Year Gold Bonds	5,000.00
3 4% Refunding Allen County, Ky., Bonds	3,000.00

1 4% Independent School District School Building Bond, West Des Moines, Ia.	1,000.00
1 4% Refunding Bond, Lisbon, Iowa	500.00
1 3½% Refunding Bond, Kenosha, Wis.	100.00
1 4½% Joint School District #1. School Building Bond, Viroqua, Wis.	100.00
10 6% 1st Mtg. Atlas Lumber & Shingle Co. Bonds	5,000.00
5 6% 1st Mtg. Edison Light & Power Co. Bonds	5,000.00
11 4% General Corporate City of Chicago Bonds	11,000.00
4) 2 4½% and 2 4% Sanitary District of Chicago Municipal Bonds	4,000.00
5 4% Cons. Mtg. Pittsburg, Cincinnati, Cleveland & St. Louis Ry. Co. Bonds	5,000.00
5 4% Refunding Oregon Short Line Bonds	5,000.00
5 4% Chicago, Burlington & Quincy Rd. Co. Illinois Division Bonds	5,000.00
5 4% 1st Mtg. Transcontinental Short Line Atchison, Topeka & Santa Fe. Ry. Co. Bonds	5,000.00
5 4% General Mtg. Atchison, Topeka & Santa Fe Ry. Co. Bonds	5,000.00
10 4% Dock & Wharf Bonds, Marinette, Wis.	10,000.00
9 5% Sewer Bonds, Ft. Smith, Ark.	9,000.00
6 5% Northwestern Gas Light & Coke Co. Bonds	3,000.00
5 5% 1st Mtg. Muncie (Ind.) Electric Light Co. Bonds	5,000.00
10 5% 1st Mtg. Chicago City Ry. Co. Bonds	10,000.00
130 5 5% Refunding Mtg. Peoples Gas Light & Coke Co. Bonds	5,000.00
5 5% 1st Mtg. North Shore Electric Co. Bonds	5,000.00
2 6% Refunding Inland Steel Co. Bonds	2,000.00
6 4% 1st and Refunding Mtg. Chicago, Rock Island & Pacific Ry. Co. Bonds	6,000.00
1 5% 1st Mtg. Commerce Building Co. (Kansas City, Mo.) Bond	1,000.00
Note and Mortg. of Chambers, Logan Peirce Date 2-26-07. Due 2-26-12.	1,000.00
Note and Mortg. of James L. Bigelow Date 4-4-98. Due 4-4-10.	3,500.00
Note and Mortg. of Florence H. Steele Date 10-21-96. Due 11-3-12.	5,000.00
Note and Mortg. of Florence H. Steele Date 4-15-04. Due 4-15-10.	1,500.00
Note and Mortg. of John B. Huling Date 7-28-97. Due 7-28-12.	1,750.00
Note and Mortg. of Mary C. Hatfield Date 7-12-98. Due 7-12-13.	2,5000.00

Note and Mortg. of Wm. W. Newberry..... 15,000.00
Date 2-14-06.
Due 2-14-11.
Note and Mortg. of Ellen E. Fitch..... 1,000.00
Date 3-8-06.
Due 3-8-10.
Note and Mortg. of Caroline A. and Lewis W. Pitcher. 13,500.00
Date 4-8-99.
Due 4-8-11.

131 *3% Certificates of Deposit.*

First Trust & Savings Bank:

#15796 ..... $10,456.78
Date 1-11-09.
Due 7-11-09.
#15797 ..... 10,456.78
Date 1-11-09.
Due 7-11-09.
#15798 ..... 10,456.78
Date 1-11-09.
Due 7-11-09.
#14611 ..... 10,302.25
Date 8-21-09.
Due 2-21-09.
#14612 ..... 10,302.25
Date 8-21-08.
Due 2-21-09.
#14613 ..... 10,302.25
Date 8-21-09.
Due 2-21-09.

Royal Trust Company:

#5729 ..... 11,107.07
Date 1-28-09.
Due 7-28-09.
#5735 ..... 10,452.78
Date 2-1-09.
Due 8-1-09.

Continental National Bank:

#1617 ..... 10,471.59
Date 1-27-09.
Due 7-28-09.
#1618 ..... 10,471.59
Date 1-28-09.
Due 7-28-09.
#1619 ..... 10,471.60
Date 1-28-09.
Due 7-28-09.

#1620		
	Date 1-28-09.	2,094.31
	Due 7-28-09.	
#1621		
	Date 1-28-09.	10,439.61
	Due 7-28-09.	
#1622		
	Date 1-28-09.	10,439.61
	Due 7-28-09.	
#1623		
	Date 1-28-09.	10,439.61
	Due 7-28-09.	
#1624		
	Date 1-28-09.	21,732.39
	Due 7-28-09.	
Cash		100,232.25
Total		566,710.50

Yours very truly,

J. B. WILBUR, *President.*"

132 That said cash and securities were deposited by said Guaranty Company with said Royal Trust Company and are now held by said Royal Trust Company under and pursuant to a certain agreement dated April 10, 1899, and made by and between said Guaranty Company and said Royal Trust Company, and a certain amendment thereto, dated February 27, 1902, which agreement and amendment thereto, are in words and figures as follows:

CHICAGO, ILLINOIS, *February the Twenty-seventh*, 1902.

At a meeting of the Board of Directors of the American Guaranty Company held in their general office in the City of Chicago on the above date, the following resolution was adopted:

Resolved: That the present agreement entered into on the tenth day of April, 1899, between the American Guaranty Company and the Royal Trust Company be changed as follows:

Page two, Section two: All securities deposited shall be such as have been approved by at least two (2) members of the Executive Committee.

Page two, Section four: The said party of the second part shall from time to time upon written order of at least two (2) members of the Executive Committee invest funds so deposited or any part thereof.

Page three, Section four: Any of such securities shall be sold by said party of the second part only upon the written order of two (2) members of the Executive Committee.

Attest:

L. W. PITCHER, *Secretary.*

[Corporate Seal of American Guaranty Co.]

133 This Memorandum, made this tenth day of April, 1899, by and between the American Guaranty Company of Chicago, formerly known as The American Investment Guaranty Company, a corporation duly organized under the laws of the State of West Virginia with general offices in the City of Chicago, and State of Illinois, party of the first part, and the Royal Trust Company a corporation duly organized under the laws of the State of Illinois, with principal offices in the City of Chicago, in said State, as Trustee, party of the second part, Witnesseth:

That whereas, the party of the first part has made, and will hereafter make Special Contracts with holders of life and accident insurance, policies, agreeing to pay the premiums thereon, and with members of fraternal bene'it societies, agreeing to pay their dues and assessments in such soci-ties, during the continuance of said Special Contracts with them, respectively.

And whereas, The said party of the first part is desirous to set aside and accumulate a reserve fund, for the purpose of meeting the accruing obligation undertaken in its said contracts issued, and to be issued, which are denominated in its business as "Special Contracts."

Now therefore, The said party of the first part hereby constitutes the said party of the second part, Trustee, to receive its said reserve fund, and the said party of the second part hereby agrees to receive said reserve fund, and any future additions thereto, as trustee, upon the following conditions:

First. The said party of the second part shall annually, at the expense of the party of the first part (said expense, however, not to exceed ten dollars ($10) per day, and not to exceed five days) employ an accountant to examine the books of the party of the first part, containing the records of the said Special Contracts, and to compute the reserves required, according to the table of re-
134 serves adopted by the party of the first part, and shall, within ten days (10 days) after the completion of such examination furnish to the party of the first part a statement of the result of such examination.

Second. When said accountant shall have completed his compilation and shall have determined the reserve value of said contracts, which have been in force one year or more and upon which there is a liability, according to said tables, said trustee shall give notice to the party of the first part, stating what amount has been found to be such reserve value, and the said party of the first part shall, within sixty days after receiving said notice, deposit with the said party of the second part, as trustee, in cash or securities, a sum equal to seventy-five per cent (75%) of the amount of such reserve value, that proportion being the reserve that the said party of the first part has agreed to establish for said Special Contracts, and the party of the second part shall furnish the party of the first part a duly signed statement for publication.

The securities to be so deposited shall be such as shall have been approved by the President or Secretary and General Manager or

three members of the Board of Directors of said party of the first part.

Third. Upon so much of the reserve deposit, to be deposited by said party of the first part, as shall be in cash or current funds, said party of the second part, the Trustee, shall pay to the said party of the first part, semi-annually, such rate of interest as shall from time to time be mutually agreed upon by and between the respective representatives of the parties hereto.

Fourth. The said party of the second part shall, from time to time upon the written order of the President or Secretary and General Manager or three members of the Board of Directors of
135 the said party of the first part, invest the funds so deposited or any part thereof, in such United States Bonds, State, City or County Securities, or such other bonds, loans or mortgages as shall be designated by the President or Secretary and General Manager or any three members of the Board of Directors of the said party of the first part; and said party of the second part shall not in any way be responsible for said investment, but only for the safekeeping of the securities and money representing such investment or investments.

Such securities shall be taken in the name of the said party of the first part and shall be held by the said party of the second part, subject to the conditions of this Agreement, the said party of the second part shall collect principal and interest thereon.

Any of such securities shall be sold by said party of the second part upon the written order of the President or Secretary and General Manager or any three members of the Board of Directors of the party of the first part and the proceeds shall be held by said Trustee, as part of the reserve fund herein contemplated.

Fifth. The interest accruing to the reserve fund shall be added to and made a part of the same.

Sixth. If the Board of Directors of the party of the first part shall for any reason deem it expedient to order a transfer of such reserve fund, or any part thereof, to any State Treasurer, or other public functionary, in pursuance of any laws that may now exist or may hereafter be passed, requiring the said party of the first part to accumulate reserves in such manner and with such officer, or to any other trustee, such transfer shall be made by the said party of the second part, provided that no such transfer shall be made by the said party of the second part until the delivery to the party of the second part of a certified copy of the order of the Board of Directors of the said party of the first part authorizing the same, and of the proper receipt for said money and securities so transferred.

136 Seventh. Said party of the first part shall have the right from time to time, to withdraw such securities as may be directed by the President or General Manager or three members of the Board of Directors of the party of the first part, upon replacing such withdrawn securities with other securities of equal par value; this right of withdrawal or substitution to be a continuing one, and

said Royal Trust Company, but the latter refused and declined so to do and still refuses and declines so to do.

5. That there are included in said $15,825,000. contracts many hundred investment, service and income contracts, which were issued less than two years prior to the date of your petitioner's appointment as Receiver herein; that the aggregate nominal contingent value of the contracts last aforesaid is, to-wit about $2,000,000.; that by the terms of all of said contracts the same do not become a fixed liability against said Guaranty Company until said contracts have run two years, and such fixed liability accrues only if all installments theretofore required to be paid by the terms of said contracts have been paid in strict compliance therewith; that until said contracts become a fixed liability, no deposit of any kind was or has been made by said Guaranty Company with said Trust Company as a reserve or other fund against said Contracts so being less than two years old; that all the contracts issued by said Guaranty Company provide for payments in periodical installments monthly, quarterly, semi-annually or annually; that the total payments made to said Guaranty Company by the holders of said less than two year old contracts, to-wit, about $300,000. for which, as aforesaid, no provision has been made in said deposit or reserve fund, or under said agreement with said Royal Trust Company.

141 6. That said agreement with said Royal Trust Company provides that said Royal Trust Company shall annually, by an accountant, examine the books of the Guaranty Company so as to compute the reserves required and shall within ten days after the completion of such examination furnish to the Guaranty Company a statement of the result of such examination; that on June 16, 1908, said Royal Trust Company furnished to said Guaranty Company the result of such an examination made by it of contracts in force on February 29, 1908; that no examination has been made covering any period since said February 29, 1908; that on contracts which became two years old and on installments and payments received by said Guaranty Company since February 29, 1908, there has accrued a balance of $55,630.18, which, under the terms of said agreement with said Royal Trust Company, should have been paid into said reserve or trust fund and could, if said Guaranty Company had not been dissolved and your petitioner been appointed as Receiver as aforesaid, be exacted and required by said Royal Trust Company, and to that extent, at least said reserve or deposit fund is insufficient and inadequate to meet the per cent requirements of said contracts, as hereinbefore specified; that said sum of $55,630.18 has not been set apart by said Guaranty Company, nor any special or other account with reference thereto kept by or on the books of said Guaranty Company, but said sum of $55,630.18 is an undistinguishable part of the entire funds and assets of said Guaranty Company, which have come into the possession of your petitioner as Receiver.

7. That the following is an approximate statement of the condition of all said contracts to which said reserve or deposit fund provided applies, as of January 31, 1909:

Total Liability on all contracts in force Jan. 31, 1909, containing 75% clause, $1,335,801.47.

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Total Liability on all contracts in force Jan. 31, 1909, containing 75% clause		$1,335,801.47
75% equals	$912,438.45	
Less Loans & Advances	325,857.85	
Balance		586,580.60
Liability on Contracts Calling for deposit of full liability with Trustee	$119,216.88	
Less Loans & Advances	85,960.33	
Balance		33,256.55
Total Deposit Required		$619,837.15
Total on Deposit with Trustee Jan. 31, 1909		564,206.97
Balance to be deposited to comply with contract conditions		55,630.18

8. That in addition to said sum of $566,719.50 of funds so held by said Royal Trust Company, said Receiver has in his actual possession or under his control, cash on hand and in banks, mortgages and other miscellaneous assets of a face or book value of $392,868.87, plus $418,346.03 representing loans made by said Guaranty Company to its contract-holders, or a total of assets of every kind, including said loans, aggregating a book value of $811,214.90, which, added to said $566,719.50 makes a total of assets having a book value of $1,377,934.40; that in order to meet the total liabilities of said Guaranty Company there will be required at least all of its assets, including all of those so held by said Royal Trust Co. that the assets so in the possession of your petition- are applicable, as your petitioner is advised by counsel, not only towards the
143 liabilities of said Guaranty Company which are not protected by said deposit with said Royal Trust Company, but also in such manner and to such extent as this court may decree to the liabilities which are secured, or which should have been secured by said deposit with said Royal Trust Company, that since February 29, 1908, said Guaranty Company made a large number of loans to contract-holders, who were entitled to the security, in manner aforesaid, so on deposit with said Royal Trust Company; that the loans so made aggregate many thousands of dollars, approximating as near as your petitioner can now ascertain, over $75,000; that said Guaranty Company was entitled, as hereinbefore stated, to a return out of said reserve or deposit fund amounts to the extent of the loans so made by it, but that no return thereof to said Guaranty Company has been made.

That it is the duty of your petitioner, as he is advised, to wind up the affairs, liquidate the debts and distribute the assets of said

Guaranty Company, under the orders of this court, and that it will be extremely costly and difficult and impossible to do so with economy, diligence and dispatch, unless all be done by your petitioner under the orders of this court, without any divided allegiance, complications and confusion which would necessarily result if said Royal Trust Company were to be permitted to retain said funds so on deposit with it, and to attempt to make distribution thereof; that part of said fund consists of bonds notes and mortgages which require the closest care, scrutiny and watchfulness of your petitioner, in order to conserve, protect and realize thereon, and make or enforce collection thereof; that your petitioner is responsible for the administration of the estate herein and is advised that he is entitled to the possession of all of said funds so held by said Royal Trust Company, that there is no duty whatever imposed upon said Royal Trust Company, by said agreement with it, to make distribution of said funds so held by it, and your petitioner is advised that
144 said duty to make such distribution is imposed and devolves upon him, as a receiver of this court, under the orders thereof, that your petitioner is advised by his counsel that it is both the right and duty of your petitioner to seek and acquire possession of said entire fund so held by said Royal Trust Company.

Wherefore, the premises considered, your petitioner respectfully prays that said Royal Trust Company may be made party defendant to this petition and that it be ruled to make answer hereunto, that a day be set upon which this petition can be heard by this Honorable Court, and that said Royal Trust Company be directed to turn over to your petitioner, as receiver herein, all of the property, assets and funds, so held by said Royal Trust Company under said agreement between it and said Guaranty Company, dated April 10, 1899, and said amendment thereto, and that said property, assets and funds, when so turned over to your orator, may be held and distributed by your orator in accordance with the rights of any and all persons in and to said property, assets and funds, and that your petitioner may have such other relief as the circumstances may require and to this Honorable Court may seem meet and proper.

And your petitioner will ever pray, etc.

EDWIN A. POTTER,
Receiver of said American Guaranty Company of Chicago.

LEVY MAYER,
Sol'r for said Receiver.

STATE OF ILLINOIS,
County of Cook, ss:

Edwin A. Potter, being first duly sworn, upon his oath deposes and says that he has read the above and foregoing petition
145 by him subscribed, and that the same is true to the best of His knowledge, information and belief.

EDWIN A. POTTER.

Subscribed and sworn to by said Edwin A. Potter, before me, a Notary Public, this 13th day of February A. D. 1909.

KATHRYN MacDONALD,
[SEAL.] *Notary Public.*

146 EXHIBIT "A."

$—. CHICAGO, —— —, 190–.

For value Received, on or before —— —, I promise to pay to the order of the American Guaranty Company of Chicago, —— Dollars, with interest thereon at the rate of — per centum per annum at its general office in the City of Chicago.

This note is secured by Contract No. —, which is assigned and deposited as collateral security for the above named amount and interest thereon, and is a first lien on the reserve fund accumulated or to accumulate under the terms of said Contract in the hands of the trustee, its successors or assigns, who are hereby authorized to release and to pay to American Guaranty Company of Chicago, the above named sum, receipt of which is hereby acknowledged.

Failure to pay this note at maturity or any instalments to become due on said Contract shall (without notice and at the option of the Company) constitute a surrender of said Contract.

It is understood and agreed that all or part of the amount due hereunder may be paid at any time previous to maturity, interest being retained only for the actual time the loan remains unpaid.

—— ——.

No. —. Due —— —, 190–. Interest paid to —— —, 190–.

147 EXHIBIT "B."

UNITED STATES OF AMERICA.

Number —.

American Guaranty Company of Chicago.

Know All Men by these Presents that whereas —— —— hereafter styled Nominator, has paid to the American Guaranty Company of Chicago —— Dollars in advance and agrees to pay a like sum on the fifth day of —— hereafter until instalments for —— years have been made.

Now, therefore the said American Guaranty Company Hereby Covenants and Guarantees that on the fifth day of —— nineteen hundred and —— upon due surrender of this Indenture, provided it is then in force, to pay unto —— —— hereafter styled Nominee, the sum of —— Dollars in Gold Coin of the United States of America, or in lieu thereof, to deliver at its home office —— registered ten years five per cent Coupon Gold Bonds of the denomination of One Thousand Dollars each, said Bonds to be in the form of the

Specimen Bond herewith. The application herefor and the privileges and conditions on the third page hereof form a part of this Contract.

In witness whereof The American Guaranty Company of Chicago, has caused this Instrument to be executed in its name and by its proper officers and at its General Offices at Chicago, Ill., this — day of ——, 19—.

—— ——, *President.*

—— ——, *Secretary.*

Canceled. Canceled.

148 *Privileges and Conditions.*

1. As security for the redemption of this Indenture, the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust, sundry moneys, or other securities such as banks and trust companies are authorized to invest in first mortgages on real estate or bonds issued by the United States of America or municipalities thereof to such an amount as shall equal in the aggregate seventy-five per cent of the surrender value of this obligation.

2. The Nominator may, after —— full years' instalments have been made, surrender this Indenture, and upon such surrender, duly made, receive a paid-up Certificate for the amount shown in the schedule endorsed hereon; the maturity date of said paid-up Certificate to be coincident with the maturity date of this Indenture; said paid up Certificate at its maturity, is payable in gold coin or in ten year five per cent interest bearing bonds of equal value, at the option of the holder.

Or this Indenture may be surrendered after —— full years' payments have been made, and upon such surrender the Company will pay in cash therefor, at its general office, a sum not less than the amount shown in the schedule hereon.

3. The Nominee, executors, administrators, legal representatives or assigns may renew this Indenture to full maturity upon the same terms and conditions as the Nominator.

Or they may surrender this Indenture and when duly surrendered receive either the paid-up Certificate or the cash value as shown in the schedule hereon.

4. This Indenture is issued with the express understanding that the Nominator may at any time during its continuance substitute any other person or persons as Nominee by giving written notice accompanied by this Indenture, such change to be duly endorsed hereon.

149 5. Should default be made at any time hereafter in the payment of any instalment due under this Contract the Company will waive such default and accept payment of said instalment, provided the amount thereof with interest thereon at five per cent per annum from date of default be tendered to it within sixty days after such default.

6. All payments provided in this obligation to be made either by or to the owner hereof are due and payable at the general offices of the American Guaranty Company in the City of Chicago, Illinois, and such payments due the Company may be made elsewhere only when exchanged for its receipt, signed by its president, vice-president, secretary, treasurer or cashier.

Loans.

7. The American Guaranty Company will loan the owner or legal holder hereof, such sum or sums, as are shown in the schedule accepting said Indenture as collateral security for said loan.

Schedule.

Amount of paid-up certificate to which the holder hereof shall be entitled after instalments for — years shall have been paid.

At End of
1st year $—
2d " $—
3d " $—
4th " $—
5th " $—
6th " $—
7th " $—
8th " $—
9th " $—
10th " $—

Cash value or amount that the company will loan the holder hereof after it has been in force — years.

At the end of
1st year $—
2d " $—
3d " $—
4th " $—
5th " $—
6th " $—
7th " $—
8th " $—
9th " $—
10th " $—

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Amount of paid-up certificate to which the holder hereof shall be entitled after instalments for years shall have been paid.

At End of
11th year $—
12th " $—
13th " $—
14th " $—
15th " $—
16th " $—
17th " $—
18th " $—
19th " $—
20th " $—

Cash value or amount that the company will loan the holder hereof after it has been in force — years.

At the end of
11th year $—
12th " $—
13th " $—
14th " $—
15th " $—
16th " $—
17th " $—
18th " $—
19th " $—
20th " $—

8. No agent has the right or power to modify this Indenture or bind the Company by any promise or representation, information or statement not contained herein.

L. W. PITCHER, *Secretary.*

(Endorsed on the back:) Convertible Contract, Number — of the American Guaranty Company of Chicago. Period — years. Amount $—. First Payment $—. Nominator —— ——. Residence —. This Contract at Maturity is Convertible into 5% Ten Year Gold Bonds. Principal and Interest Payable in Gold Coin at the General Offices American Guaranty Company in the City of Chicago, Illinois, U. S. A.

Received from the American Guaranty Company of Chicago —— Dollars in full for all claims under the within Contract terminated by —

—— ——.

Witness:

—— ——.

151 EXHIBIT "C."

UNITED STATES OF AMERICA.

Number —.

American Guaranty Company of Chicago.

Know All Men by these Presents, that whereas, —— —— hereinafter styled Nominator, has paid to the American Guaranty Company of Chicago the sum of —— Dollars.

Now therefore the said American Guaranty Company of Chicago, Hereby Covenants and Agrees to act as his agent and as such agent on his behalf to make the payments specified in his application copy of which appears on the third page and is with all its conditions made a part hereof.

This Contract may be renewed from time to time at the option of the holder for the period of —— years upon the payment of the sum of —— Dollars on the fifth day of —— hereafter until instalments for —— years have been made: and if renewed for the full period of —— years, the American Guaranty Company Hereby Covenants and Guarantees to pay unto —— —— of ——, hereinafter styled Nominee, on the fifth day of —— 19—, —— Dollars in gold coin of the United States of America, provided no loans or advances made hereon remain unpaid and on due surrender of this Contract.

152 In Witness Whereof The American Guaranty Company, of Chicago has caused this instrument to be executed in its name by its proper officers and at its General Offices at Chicago, Ill., this — day of ——, 19—.

Canceled. Canceled.

—— ——, CHAS. L. FUREY.

Secretary.

Western Bank Note of Chicago.

153 *Privileges and Conditions.*

1. All payments provided in this obligation to be made either by or to the owner thereof are due and payable at the general offices of the American Guaranty Company in the City of Chicago, Illinois.

2. It is expressly understood that in paying insurance premiums or assessments for the applicant the Company will act solely as agent and will have no interest in and assume no liability under the insurance policies or certificates.

3. After the owner has exercised his option of renewal and this Contract has been in force for the period of two full years, then in default of the payment of the sum necessary to renew this Contract for the next period the owner may exercise any one of the following options: (*a*) To surrender this Contract at any time within ninety days after first default and receive a Paid-up Contract equal to the paid-up value at the time of such default, as shown by Schedule below, the same to mature at the maturity date of this Agreement, but no paid-up Contract shall be so issued until all advances or loans made hereon shall have been satisfied. (*b*) To surrender this Contract and receive from the Company in cash a sum not less than the full reserve value, as shown by Schedule below, less the amount of any advances or loans made hereon. (*c*) Should the owner fail to exercise either of the foregoing options, the Company will apply the reserve value as hereinafter defined to the making of the payments designated in the application herefor for such period as the reserve value will suffice to pay; and such disbursements shall operate as full payment, satisfaction, and discharge of this Contract.

4. Should the owner fail to exercise his option of renewal previous to the fifth day of —— then this Contract will be ter-
154 minated without notice and all payments provided for will cease.

5. Should the payments designated in the application herefor at any time be less than the amount stated in said application, the difference shall be credited to the owner at the end of the current year and paid over to the owner upon demand and, if not sooner paid, shall be added to the principal sum due whenever this Contract is terminated.

6. If at any time the payments designated in said application shall require a sum in excess of the amount herein provided to be made, the Company will advance such additional amount up to not exceeding the then present reserve value of this Contract, such advance payments to be considered as a loan which may be refunded, or shall constitute a part payment of any moneys to become due from the Company.

7. It is understood and agreed that at maturity the Nominator may at his option leave with the Company so much of the maturity value of this Contract as shall at five per cent per annum equal the sum then required for disbursements, whereupon the Company will continue to act as agent until released from making said disbursements by surrender of this Contract, at which time the fund so remaining, less any loans or advances then unpaid, will be paid to the Nominator; or at any time prior to maturity when the accumulated net reserve hereon equals an amount on which the interest at the

rate of five per cent per annum shall equal the sum then required for disbursements, the Company will upon application in writing waive further payment of instalments and continue to act as agent until relieved from making such disbursements by surrender
155 of this Contract, at which time said reserve and any accumulations less the amount of any advances or loans remaining unpaid hereon, will be paid to the Nominator.

8. The nominee, executors, administrators, legal representatives or assigns may renew this Contract to full maturity upon the same terms and conditions as the Nominator. This Contract is issued with the understanding that the Nominator may at any time during its continuance substitute any other person or persons as Nominee by giving written notice, duly acknowledged accompanied by this Contract. Such change to be duly indorsed hereon. The Company, however, will assume no responsibility by reason of consenting to any assignment.

9. As security for the redemption of this Contract the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust with an institution legally empowered to act as such trustee, sundry moneys or other securities such as banks and trust companies invest in, first mortgages on real estate, or bonds issued by the United States of America or municipalities thereof, which shall constitute the reserve under this Contract to such an extent as shall equal in the aggregate not less than seventy-five per cent of the reserve value.

156 10. No agent has the right or power to modify this Contract or bind the Company by any promise or representation, information or statement not contained herein.

Loans.

11. The American Guaranty Company will loan the owner or legal holder hereof, such sum or sums which shall equal the surrender value of this Contract, accepting said Contract as collateral security for said loan.

157 SCHEDULE.

Paid-up values to which the holder hereof shall be entitled.		Reserve value or amount that the company will loan the holder hereof	
At end of		At end of	
2d year.....	$.....	2d year.....	$.....
3d "	$.....	3rd "	$.....
4th "	$.....	4th "	$.....
5th "	$.....	5th "	$.....
6th "	$.....	6th "	$.....
7th "	$.....	7th "	$.....
8th "	$.....	8th "	$.....
9th "	$.....	9th "	$.....
10th "	$.....	10th "	$.....

Paid-up values to which the holder hereof shall be entitled.		Reserve value or amount that the company will loan the holder hereof.	
At end of		At end of	
11th year.....	$.....	11th year.....	$.....
12th "	$.....	12th "	$.....
13th "	$.....	13th "	$.....
14th "	$.....	14th "	$.....
15th "	$.....	15th "	$.....
16th "	$.....	16th "	$.....
17th "	$.....	17th "	$.....
18th "	$.....	18th "	$.....
19th "	$.....	19th "	$.....
20th "	$.....	20th "	$.....

Canceled. Canceled.

Examined by —— ——

L. W. PITCHER, *Secretary*

158 *Application to American Guaranty Company of Chicago.*

I hereby make application for a Service Contract whereby you will, as my agent, assume the payment (as the same may become due and upon due notice) of such sum or sums as are necessary to maintain my Insurance for the period of —— months in the Companies, Associations or Societies enumerated below, of which I am a member in good standing at this date and which now require payments aggregating $—— per annum. The Contract to mature on the 5th day of —— Nineteen Hundred and —— for $—— for which I have this day paid the soliciting agent the sum of $——, same being the first —— payment thereon. Future payments to be made ——, at the same rate, to continue only so long as I may desire to keep the Contract in force, it being understood and agreed that after payments for —— years have been made, no further payments will be required.

I nominate —— —— of —— as the person to whom the value of the Contract shall be paid on the 5th day of —— 19——, and in the event that I shall for any cause at any time during the life of said Contract become incapacitated from receiving benefits of the agency so to be created I authorize and direct the Company to extend to my said Nominee all the benefits, rights and privileges in said Contract enumerated.

159 I reserve the right to cancel or change these instructions and to substitute any other person or persons as nominee, and to surrender the Contract and receive the benefits provided therein.

The Contract is not to be regarded as binding upon the Company until the first installment on same has been paid in cash.

Dated at —— this — day of —— 190–.

(Sign here) —— ——.

Post Office Address ——.
City and State ——.
Occupation ——.

Form of Contract to be Issued.

—— ——, Agent.

I am a member of the following Societies or Associations, to whom payments are to be made in my behalf, until further instructions.

Name of society.	Name and number of subordinate body.	Name and address of collector to whom remittances are to be made.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

160

Amount of each assessment.	Assessment has been paid for month of—	Company to remit for assessment due—	Amount of quarterly dues.
.....	.....	.....	$.....
.....			Company to remit for quarter ending
.....			

I am a policy holder in the following Companies, to whom payments are to be made in my behalf, until further instructions:

Name of company.	Name and address of agent to whom remittances are to be made.	Amount of premium.
.....	.....	$.....
.....	.....	.....
.....	.....	$.....

How paid.	When is next payment due.
.....	.....

Canceled. Cancelled.

161 *Service Contract*

Number —

Of the American Guaranty Company of Chicago.

Period..... ..... years.

Amount $.....

First payment $.....

Nominator.....

Residence.....

162 $..... ....190...

Received from the American Guaranty Company of Chicago, ...dollars in full for all claims under the within contract..... ....

Witness.....

163 Dollars $10,000. Number A.

American Guaranty Company of Chicago

Hereby covenants and guarantees to pay to the order of the applicant an annual income of One Thousand Dollars for the period of ten years, being in all the sum of Ten Thousand Dollars payable

only upon presentation and surrender of the income coupons hereto attached as they severally become due, subject to the conditions set forth therein, the last coupon to be accompanied by this contract for cancellation; or upon presentation and surrender of this contract with all coupons attached there will be paid Seven Thousand Five Hundred Dollars in Gold Coin on the fifth day of —— 192–.

This Contract is made in consideration of the application of —— —— of —— —— and the payment of Thirty Dollars due —— 5th, 190– the receipt of which is hereby acknowledged, and the further payment of the same amount to be made on the fifth day of each and every month thereafter until payments for 180 months shall have been made in all, after which the coupons hereto attached will be countersigned upon presentation.

The privileges, conditions and schedule printed on the third page hereof, together with the application herefor; are made a part of this contract.

In Witness Whereof, the American Guaranty Company of Chicago has caused this contract to be executed in its name and by its proper officers and at its general offices at Chicago, Illinois, this — day of —— 190–.

CHAS. L. FUREY,
Vice President.

—— ——, *Secretary.* Canceled.

Canceled.

164 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:
—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all

payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

165 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

166 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:
—— ——, *Treasurer.*

167 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:
—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:
—— ——, *Treasurer.*

168 $1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand

Dollars in Gold Coin. This Coupon will be countersigned by the Treasurer of the Company upon presentation any time after all payments have been made on Income Contract of which it forms a part, and is not payable until so countersigned.

L. W. PITCHER, *Secretary.*

No. A.

Countersigned:

—— ——, *Treasurer.*

$1000. $1000.

American Guaranty Company of Chicago

On the fifth day of —— — —— will pay at its General Offices in the City of Chicago to the Order of the legal holder One Thousand Dollars in Gold Coin. This Coupon will be Countersigned by the Treasurer of the Company upon Presentation any time after all payments have been made on Income Contract, of which it forms a part, and is not payable until so Countersigned.

No. A.

L. W. PITCHER, *Secretary.*

Countersigned:

—— ——, *Treasurer.*

169 *Privileges and Conditions.*

SECTION 1. As security for the redemption of this contract the American Guaranty Company of Chicago, (hereafter styled the Company) covenants and guarantees that it will keep on deposit in trust with an institution legally empowered to act as such trustee, cash, first mortgages, on real estate, bonds issued by the United States of America or municipalities thereof, and such other securities as banks and trust companies invest in to an amount equal to the cash loan value hereunder, less the amount of any unpaid loans hereon.

SECTION 2. At any time after this contract has been in force two (2) or more full years, provided all payments previously due have been made, it may be exchanged for a Paid-up Income Contract for the amount specified in the Paid-up Income Schedule indorsed hereon. The coupons forming a part of any Contract for which this may be exchanged will be payable at the same time and in the same manner as the coupons attached hereto would have been paid had this contract been continued to maturity.

SECTION 3. Should this Contract be exchanged for a Paid-up Income Contract and any loans made on this Contract remain unpaid at the time of such exchange, an assignment of the Paid-up Income contract as full collateral security will be accepted.

170 SECTION 4. After payments have been made covering a period of twelve (12) months the Company upon request for the purpose only of making not more than twelve (12) monthly payments in advance will loan the amount required.

SECTION 5. At any time the Company will loan the legal holder in cash any amount not exceeding the cash loan value of any year for which all payments have been made, less the amount of any unpaid loans hereon.

SECTION 6. After payments for two (2) or more full years have been made the Company will loan the amount stipulated in the Advance Loan Schedule less one year's interest, and the amount of any unpaid loans, provided twelve (12) monthly payments in advance are made at the time the loan is secured.

SECTION 7. The assignment of this Contract will be accepted as full collateral security for any loan made hereon.

SECTION 8. Any loan made hereon will be renewed at maturity upon request.

SECTION 9. Interest on loans and on renewals of same, will be payable in advance, but any part of the sum borrowed may be repaid at any time previous to maturity, interest being retained only for the actual time the loan remains unpaid.

SECTION 10. The amount of all loans remaining unpaid will be deducted from any settlement made hereunder.

171 SECTION 11. Upon surrender of this contract for cancellation, at any time after it has been in force two (2) or more full years, the Company will pay to the legal holder an amount equal to the cash loan value at the end of the last year covering which all payments have been made.

SECTION 12. The payments provided in this Contract to be made by or to the owner are due and payable at the general offices of the Company; and such payments due the Company, if made elsewhere will not be binding upon the Company until a receipt is issued for same signed by its president, vice-president, secretary, treasurer or cashier.

SECTION 13. Should the stipulated payments hereunder be discontinued before the period of twenty-four (24) months has been covered, all moneys previously paid shall remain the property of the Company, but the amount of same will be allowed as a credit on a new Contract for a like amount provided the legal holder hereof within one year from the time of such discontinuance applies for said new Contract and makes at least one monthly payment in advance. Failure to make such application and payment within the time specified shall work an unconditional forfeiture of this Contract and all payments made hereon.

172 SECTION 14. At the expiration of one hundred eighty (180) months, all payments having been made for that time, at the option of the legal holder this Contract with all coupons attached may be surrendered for cancellation; and upon such surrender duly made the Company will pay to the legal holder seventy five hundred dollars ($7,500.00) in gold coin; or it may be exchanged for a Paid-up Income Contract for eleven thousand, two hundred fifty dollars ($11,250.00) payable in fifteen (15) equal annual instalments of seven hundred fifty dollars ($750.00) each; or it may be exchanged for a Paid-up Income Contract for twelve thousand five hundred dollars ($12,500.00) payable in twenty (20)

equal annual instalments of six hundred twenty-five dollars ($625.00) each.

SECTION 15. At the maturity of any coupon hereunder, or at the time any payment is due under the terms of any contract for which this Contract may be exchanged, upon due surrender of the remaining Coupons or Contract providing for payments the Company will pay to the legal holder thereof the then cash value according to its present published table of conversion rates.

SECTION 16. Should the applicant for this Contract die and his or her heirs or legal representatives not desire to avail themselves of any of the privileges originally extended, the Company will upon request made within sixty days after said decease waive the conditions of the Contract and upon surrender of same with all coupons attached permit the withdrawal of the full amount of all moneys paid hereon.

173

Paid-up income schedule referred to in section 2.		Cash loan value referred to in sections 1, 5, and 11.		Advance loan schedule referred to in section 6.	
At the end of—		At the end of—		At end of—	
2nd year	$1333.32	2nd year	$316.80	2nd year	$720.00
3rd "	$2000.00	3rd "	$655.20	3rd "	$1080.00
4th "	$2666.66	4th "	$993.60	4th "	$1440.00
5th "	$3333.32	5th "	$1332.00	5th "	$1800.00
6th "	$4000.00	6th "	$1685.80	6th "	$2176.38
7th "	$4666.66	7th "	$2064.84	7th "	$2579.62
8th "	$5333.32	8th "	$2475.74	8th "	$3016.74
9th "	$6000.00	9th "	$2927.34	9th "	$3497.16
10th "	$6666.66	10th "	$3429.74	10th "	$4031.62
11th "	$7333.32	11th "	$3995.30	11th "	$4633.30
12th "	$8000.00	12th "	$4638.30	12th "	$5317.34
13th "	$8666.66	13th "	$5376.30	13th "	$6102.44
14th "	$9333.32	14th "	$6230.70	14th "	$7011.38
15th "	$10000.00	15th "	$7500.00	15th "	$7978.72

SECTION 17. The Company will assume no responsibility by reason of consenting to any assignment of this Contract.

SECTION 18. No agent has the right or power to modify this Contract or bind the Company by any promise or representation, information or statement not contained herein.

L. W. PITCHER, *Secretary.*

(The word Canceled in perforation.)

174 (Endorsed on the back:) Number A. American Guaranty Company of Chicago. $10,000. (ten-year) income contract.

$—— ——, 190—.

Received from the American Guaranty Company of Chicago —— Dollars for all claims under the within contract.

—— ——.

Witness:

—— ——.

Assignment.

For value received I hereby assign, transfer and set over to —— —— of —— —— the within contract and all rights, privileges and benefits accruing thereunder.

Dated at —— this — day of —— 19—

Witness:

—— ——. —— ——,

Applicant.

(Endorsed:) Filed Feb. 13, 1909. H. S. Stoddard, Clerk.

175 And on to-wit: the seventeenth day of February, 1909, come the Royal Trust Company by its solicitors and filed in the Clerk's office of said Court, in said entitled cause its certain Demurrer to the Petition of the Receiver, filed February thirteenth, 1909. Said Demurrer is in the words and figures following to-wit:

Demurrer of Royal Trust Company to Petition of Receiver.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. G. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

In the Matter of the Petition of EDWIN A. POTTER, Receiver, vs. ROYAL TRUST COMPANY.

Demurrer of Royal Trust Company to Petition of Edwin A. Potter, Receiver.

Filed February 13, A. D. 1909.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said petitioner's petition contained, to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said petition and for cause of demurrer shows that the said petitioner has not, in and by his said petition, made or stated such a case as does, or ought to, entitle the petitioner to any such discovery or relief, as is thereby sought and prayed for, from or against this defendant.

176 Wherefore, and for divers other good causes of demurrer appearing in the said petition, this defendant demands the judgment of this Honorable Court, whether he shall be compelled to make any further or other answer to the said petition; and prays

to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

SCOTT, BANCROFT AND STEPHENS,
Solicitors for said Defendant.

I hereby certify that I am one of the counsel for the above named defendant, and that the above and foregoing demurrer is well founded in point of law.

FRANK H. SCOTT.

STATE OF ILLINOIS,
County of Cook, ss:

A. A. Johnston, being first duly sworn, deposes and says that he is the agent in this behalf of the Royal Trust Company, defendant in the above entitled cause, and makes this affidavit on its behalf and by its authority; and that the above and foregoing demurrer is not interposed for delay but that justice may be done.

A. A. JOHNSTON.

Subscribed and sworn to before me this 17th day of February, A. D. 1909.

[SEAL.] HARRIET FREELAND,
Notary Public.

(Endorsed:) Filed Feb. 17, 1909. H. S. Stoddard, Clerk.

177 And on to-wit: the twenty-seventh day of February, 1909, being one of the days of the regular December Term of said Court, 1908, in the record of proceedings thereof in said entitled cause before the Hon. C. C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Order of February 27, 1909, Overruling Demurrer.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO.

There now comes on to be heard the petition of Edwin A. Potter, Receiver herein, filed herein on February 13, 1909, against the Royal Trust Company of Chicago, praying for an order directing said Royal Trust Company to turn over to said Receiver all of the property, assets and funds held by said Royal Trust Company under an agreement dated April 10, 1899, as amended, made between it and said American Guaranty Company of Chicago, and also the demurrer of said Royal Trust Company filed to said petition; and

there comes on also to be heard at the same time the intervening petition filed herein on February 19, 1909, of A. E. Cross, et al., constituting the Contract-holders' Committee, and which intervening petition prays that the relief sought for in said petition of said receiver should be granted; and the court having heard the arguments of Levy Mayer, Esq. counsel for said receiver, and of E. A. Bancroft, Esq., counsel for said Royal Trust Company, and of Messrs. Gorham and Wales, counsel for said Contract-Holders' Committee, and being fully advised in the premises,

178 It is hereby Ordered and Adjudged that said demurrer of said Royal Trust Company shall be and the same is hereby overruled, and said Royal Trust Company asks and is hereby given leave to answer said petition of said Receiver at or before 10 A. M. of Tuesday, March 2nd, 1909.

179 And on to-wit: the nineteenth day of February, 1909, being one of the days of the regular December term of said court, 1908, in the record of proceedings thereof, in said entitled cause before the Hon. C. C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Order of February 19, 1909. *Leave Given Royal Trust Company to File Intervening Petition.*

29336.

CARRIE REBECCA FUREY, Ex., etc., et al.,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Leave is hereby given the Royal Trust Company, trustee, to file its intervening petition instanter, and the same is set for hearing on the 23rd instant.

180 And on to-wit: the nineteenth day of February, 1909, come the Royal Trust Company by its solicitor and filed in the clerk's office of said Court a certain Notice in the words and figures following to-wit:

Notice Filed by Royal Trust Co.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

To George S. Steere, Esq., Mayer, Meyer & Austrian, Gorham & Wales:

Please take notice that upon the opening of court Friday morning, February 19, 1909, before his Honor Judge Kohlsaat, in the room usually occupied by him as a court room in the Federal Building, we shall move the court for leave to file, in the above entitled cause, the intervening petition of the Royal Trust Company, trustee, at which time and place you may appear if you see fit.

SCOTT, BANCROFT & STEPHENS,
Solicitors for Royal Trust Company.

Received a copy of the above and foregoing notice this 18th day of February, A. D. 1909.

GEORGE S. STEERE.
STEERE, WILLIAMS & STEERE.
MAYER, MEYER & AUSTRIAN.
GORHAM & WALES.

(Endorsed:) Filed Feb. 19, 1909, H. S. Stoddard, Clerk.

181 And on to-wit: the nineteenth day of February, 1909, there was filed in the clerk's office of said court in said entitled cause a certain Motion in words and figures following to-wit:

Motion of Royal Trust Co.

CHICAGO, *Feb.* 19, 1909.

Circuit Court of the United States, Northern District of Illinois, Eastern Division.

Gen. No. 29336.

CARRIE REBECCA FUREY as etc., et al.,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Motion of Solicitor for Royal Trust Company, Defendant.

L.-v- to Royal Trust Company, Trustee to file intervening petition instanter and rule on all parties to plead, answer or demur thereto within — days.

SCOTT, BANCROFT & STEPHENS,
Plaintiffs' Attorney, Sol'rs for Royal Trust Co.

23rd Leave to file.

Motions must be endorsed with number and title of cause.

(Endorsed:) Filed Feb. 19, 1909, H. S. Stoddard, Clerk.

182 And on to-wit: the nineteenth day of February, 1909, come the Royal Trust Company by its solicitors and by leave of court first had and obtained, filed in the clerk's office of said Court in said entitled cause its certain Intervening Petition, in words and figures following to-wit:

Intervening Petition of Royal Trust Company.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,
v.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Intervening Petition of Royal Trust Company as Trustee.

To the Honorable the Judges of said United States Circuit Court:

Now comes Royal Trust Company, heretofore made defendant to the petition of Edwin A. Potter, Receiver, and respectfully shows the following:

1. That on or about the 10th day of April, 1899, the American Guaranty Company of Chicago, hereinafter referred to as the Guaranty Company, defendant in this proceeding, entered into a contract with this intervening petitioner in words and figures following, to-wit:

This Memorandum, made this tenth day of April, 1899, by and between the American Guaranty Company of Chicago,
183 formerly known as The American Investment Guaranty Company, a corporation duly organized under the laws of the State of West Virginia with general offices in the City of Chicago, and State of Illinois, party of the first part, and the Royal Trust Company, a corporation duly organized under the laws of the State of Illinois, with principal offices in the City of Chicago, in said State, as trustee, party of the second part, Witnesseth:

That whereas, the party of the first part has made, and will hereafter make special Contracts with holders of life and accident insurance, policies, agreeing to pay the premiums thereon, and with members of fraternal benefit societies, agreeing to pay their dues and assessments in such societies, during the continuance of said Special Contracts with them, respectively.

And whereas, the said party of the first part is desirous to set aside and accumulate a reserve fund, for the purpose of meeting the accruing obligations undertaken in its said contracts issued, and to be issued, which are denominated in its business as "Special Contracts."

Now therefore, the said party of the first part hereby constitutes the said party of the second part, Trustee, to receive its said reserve fund, and the said party of the second part hereby agrees to receive said reserve fund, and any future additions, thereto, as trustee, upon the following conditions:

First. The said party of the second part shall annually, at the expense of the party of the first part (said expense, however, not to exceed ten dollars ($10.) per day, and not to exceed five days) employ an accoun-ant to examine the books of the party of the first part, containing the records of the said Special Contracts, and to com-
pute the reserves required, according to the table of reserves
184 adopted by the said party of the first part, and shall, within ten days (10) after the completion of such examination furnish to the party of the first part a statement of the result of such examination.

Second. When said accoun-ant shall have completed his compilation and shall have determined the reserve value of said contracts, which have been in force one year or more and upon which there is a liability, according to said tables, said trustee shall give notice to the party of the first part, stating what amount has been found to be such reserve value, and the said party of the first part shall, within sixty days after receiving said notice, deposit with the said party of the second part, as trustee, in cash or securities, a sum equal to seventy-five per cent (75%) of the amount of such reserve value, that proportion being the reserve that the said party of the first part

has agreed to establish for said Special Contracts, and the party of the second part shall furnish the party of the first part a duly signed statement for publication.

The securities to be so deposited shall be such as shall have been approved by the President or Secretary and General Manager or three members of the board of directors of said party of the first part.

Third. Upon so much of the reserve deposit, to be deposited by said party of the first part, as shall be in cash or current funds, said party of the second part, the trustee shall pay to the said party of the first part, semi-annually, such rate of interest as shall from time to time be mutually agreed upon by and between the respective representatives of the parties hereto.

185 Fourth. The said party of the second part shall, from time to time upon the written order of the President, or secretary and general manager or three members of the board of directors of the said party of the first part, invest the funds so deposited or any part thereof, in such United States bonds State, City or County Securities, or such other bonds, loans or mortgages, as shall be designated by the president or secretary and general manager or any three members of the Board of Directors of the said party of the first part; and said party of the second part shall not in any way be responsible for said investment but only for safekeeping of the securities and money representing such investment or investments.

Said securities shall be taken in the name of the said party of the first part and shall be held by the said party of the second part, subject to the conditions of this Agreement, and said party of the second part shall collect the principal and interest thereon.

Any such securities shall be sold by said party of the second part upon the written order of the president or secretary and general manager or any three members of the Board of Directors of the party of the first part and the proceeds shall be held by said trustee, as part of the reserve fund herein contemplated.

Fifth. The interest accruing to the reserve fund shall be added to and made a part of the same.

Sixth. If the Board of Directors of the party of the first part shall for any reason deem it expedient to order a transfer of such reserve fund, or any part thereof, to any State Treasurer or other public functionary, in pursuance of any laws that may now exist or may hereafter be passed, requiring the said party of the first part to accumulate reserves in such manner and with such officer, or to any other trustee, such transfer shall be made by the said party of the

186 second part, provided that no such transfer shall be made by the said party of the second part until the delivery to the party of the second part of a certified copy of the order of the Board of Directors of the said party of the first part authorizing the same, and of a proper receipt for said money and securities so transferred.

Seventh. Said party of the first part shall have the right from time to time, to withdraw such securities as may be directed by the president or general manager or three members of the Board of directors

of the party of the first part, upon replacing such withdrawn securities with other securities of equal par value; this right of withdrawal or substitution to be a continuing one, and every security at any time held by the Trustee, shall be thus held subject to such right, or withdrawal and substitution.

Eighth. Upon the surrender to the Company of any Special Contracts upon which any reserve shall have accumulated and been deposited with said Trustee, said party of the first part shall be entitled to withdraw an amount from said reserve fund proportioned to seventy-five per cent of the withdrawal value thereof, upon evidence to said Trustee of the cancellation of such Special Contracts.

Ninth. The said party of the first part shall have the right to loan all or a portion of said reserve to the holder of a Special Contract and to take his or her note therefore, and the amount of such loan shall be deducted from the liabilities due upon the said Special Contract, and the party of the first part shall have the right to take credit for the amount of such loan from the trust fund, to be deposited under the terms of his contract, with the party of the second part, and if previously deposited then to withdraw the amount of such loan or loans, from time to time, during the continuous of this contract.

Tenth. In case of the dissolution of the party of the first part the entire reserve held hereunder shall be divided among the holders of the Special Contracts, in the proportion which said re-
187 serve bears to the net withdrawal value of each of said Special Contracts outstanding.

Eleventh. The party of the second part shall be answerable only for its own default, malfeasance or negligence, in carrying out this contract.

Twelfth. The said party of the second part shall be entitled to be reimbursed for all proper outlays of every sort or nature by it made or incurred in the discharge of its trust thereunder; and shall be under no obligation to recognize any firm, person, or persons, corporation, as holder or holders, owner or owners of one or more of the Special Contracts aforesaid, or to do, or refrain from doing any act pursuant to a request of any person or persons, firm or corporation, professing or claiming to be such owner or holder, until such supposed owner or holder shall produce such Special Contracts, and deposit the same with the Trustee, and shall, upon request, indemnify and save harmless, the said trustee from any costs, expenses, outlays, counsel fees, and other reasonable disbursements for which it may become liable or responsible in proceeding to carry out such request or demand.

Thirteenth. If for any reason the party of the first part should desire to terminate this contract and transfer all or a part of the trust fund accumulated, to another trustee or trustees, it shall have the right to so do, upon giving thirty days' notice in writing to the party of the second part, and an acknowledgement in writing duly signed by the new trustee, receipting for the securities so transferred, shall release the party of the second part, the Royal Trust Company, from all further obligations to the amount so transferred either to the

party of the first part, the American Guaranty Company of Chicago, or to any person or persons whomsoever.

188 Fourteenth. If, for any reason, the party of the second part should desire to terminate this contract, it shall have the right so to do, upon giving three months' notice in writing of such desire, to the said party of the first part.

In witness whereof, the said parties hereto have caused these presents to be executed by their respective officials, and their respective corporate seals to be hereto affixed the day and year first above written.

[Corporate Seal of American Guaranty Co.]

AMERICAN GUARANTY COMPANY OF CHICAGO.
CHAS. L. FUREY, *Vice-President.*
L. W. PITCHER, *Secretary.*
ROYAL TRUST COMPANY.
J. B. WILBUR, *President.*
A. A. JOHNSTON, *Secretary.*

STATE OF ILLINOIS,
County of Cook, ss:

I, Harry E. Ambler, a Notary Public, in and for the said county in the State aforesaid, do hereby certify that Charles L. Furey, vice-president of the American Guaranty Company of Chicago (formerly known as the American Investment Guaranty Company) and Lewis W. Pitcher, secretary thereof, both personally known to me to be such officers, and to be the same persons, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act and deed of the said American Guaranty Company of Chicago, for the uses and purposes therein set forth.

And the said Lewis W. Pitcher, being duly sworn, by me, deposes and says, that the seal affixed to the said instrument is the corporate seal of the said American Guaranty Company of Chicago, and was by him affixed thereto, in pursuance of the powers and au-

189 thority granted him by the by-laws of the said Company.

Given under my hand and notarial seal this tenth day of April, A. D. 1899.

[NOTARIAL SEAL.] HARRY E. AMBLER,
Notary Public.

II. That thereafter, on or about the 27th day of February, 1902, the said contract was amended as follows:

CHICAGO, ILLINOIS, *February the twenty-seventh,* 1902.

At a meeting of the Board of Directors of the American Guaranty Company, held in their general office in the City of Chicago on the above date, the following resolution was adopted.

Resolved: That the present agreement entered into on the tenth

day of April, 1899, between the American Guaranty Company and the Royal Trust Company be changed as follows:

Page two, Section two: All securities deposited shall be such as have been approved by at least two (2) members of the Executive Committee.

Page two, Section four: The said party of the second part shall from time to time upon written order of at least two (2) members of the Executive Committee invest funds so deposited or any part thereof.

Page three, Section four: Any of such securities shall be sold by said party of the second part only upon the written order of two (2) members of the Executive Committee.

III. That thereafter the Guaranty Company did issue to various persons Special Contracts known as investment and service contracts, and income contracts, copies of which are attached to the petition of the said Edwin A. Potter against this intervening petitioner, filed herein on the 13th day of February, A. D. 1909, to which for convenience, this intervening petitioner begs to refer.

190 That by the terms of the said investment and service contracts it was provided that as security for their redemption the said Guaranty Company should have and keep on deposit in trust, moneys and other securities to such an amount as should at all times equal in the aggregate at least seventy-five per cent. (75%) of the cash value of said contracts.

That the said income contracts issued prior to 1906 contained similar terms and said income contracts issued in 1906 and since that year, provide that the moneys and other securities so to be kept on deposit, in trust, shall be in an amount equal to the cash loan value specified therein.

IV. That under the first provision of said contract of April 10, 1899, this intervening petitioner annually caused an accountant to examine the books of said Guaranty Company and to compute the reserves required, according to the table of reserves, adopted by said Guaranty Company, and furnished to the latter a statement of the result of said examination.

V. That from time to time the said Guaranty Company deposited with this intervening petitioner cash and securities in professed compliance with said contract; that the result of the last examination made by such accountant, of such books was furnished by this intervening petitioner to the Guaranty Company on June 16, 1908, showing the result of such examination of contracts in force on Feb-*a*ury 29, 1908, that this intervening petitioner now has on hand in cash and securities of the face amount the sum of $566,719.50 and that the items thereof are fully detailed in the schedule hereto attached, marked "Exhibit A," that said securities and cash are held by this intervening petitioner under the terms of its said contract with said Guaranty Company for the benefit of the holders of the certificates listed in the report of said accountant as of February 29, 1908, and that this intervening petitioner is informed and

191 believes that the face value of said fund is equal to the amount required by its said contract with the said Guaranty

Company, to be deposited for the redemption of the contracts last mentioned, being said contracts in force on February 29, 1908.

VI. That in pursuance of the provision contained in the second paragraph of said contract between this intervening petitioner and the said Guaranty Company, it did annually furnish to the Guaranty Company a duly signed statement for publication; that all of said statements were substantially in the form of that dated June 16, 1908, which was as follows:

To whom it may concern:

In accordance with our custom and agreement, we caused an examination to be made of the records of the American Guaranty Company of Chicago showing Special Contracts in force February 29th, 1908, which had been in force one year and over, and upon which there was a liability according to the terms and conditions of said contracts, and from said examination and report, which has been completed and delivered, we find that we have in our possession on the date of this letter cash and securities to the credit of the Reserve Fund accumulating in our hands, the face value of which is in excess of the amount required on February 29th, 1908, under the terms and conditions of said Special Contracts.

The reserve fund consists of cash, time loans with collateral, mortgages on real estate, government and other interest bearing bonds.

Yours very truly,

ROYAL TRUST COMPANY, *Trustee*,
By A. A. JOHNSTON, *Secretary*.

192 and this intervening petitioner is informed and believes that the said Guaranty Company did circulate said statement among the contract holders secured by said deposit and did cause the same to be published and circulated among other persons whom it endeavored to procure to take contracts with the said Guaranty Company.

VII. That this intervening petitioner is informed and believes that the said Guaranty Company was duly dissolved on February 1, 1909, by a decree of dissolution duly entered in the Circuit Court of Kanawha County, West Virginia; that by reason thereof, under the tenth paragraph of the said contract between the Guaranty Company and this intervening petitioner, the fund so held by it should be divided among the holders of the said special contracts, on account of which, said fund was so deposited and that this intervening petitioner is advised that the duty devolves upon it as such trustee, to make distribution of said fund among the said beneficiaries thereof.

VIII. That this intervening petitioner is informed and believes that the said Guaranty Company is indebted to a large amount to other persons than the said contract holders who are secured by said fund; that it is unable to state the amount of such indebtedness, but that the same is not less than the sum of $100,000.

IX. That the great bulk of said fund consists either of cash or of

securities readily convertible into cash; that the contracts on account of which the said fund was deposited, are matters of record as are the names and addresses of the persons holding the same, and that the distribution of said fund among the persons entitled thereto, can be accomplished without great delay.

193 X. That this intervening petitioner desires the aid and direction of this Honorable Court in the closing of said trust in accordance with the provisions of said trust agreement and in the disposition and collection of the assets other than cash now held by it in said fund and in the division by it of said entire fund among the persons entitled to share therein, being the holders of the contracts therein mentioned, in the proportion which said reserve fund bears to the net withdrawal value of said contracts outstanding, as provided in the terms of said trust as aforesaid.

And to that end it prays that it may be made defendant to the original bill herein and that it may have leave to ask the aid and direction of this Honorable Court from time to time in and about the closing of said trust, the reduction of said assets to cash and the distribution thereof among the parties entitled to share therein, as aforesaid.

ROYAL TRUST COMPANY,
By A. A. JOHNSTON, *Secretary.*

STATE OF ILLINOIS,
County of Cook, ss:

A. A. Johnston, being first duly sworn, deposes and says that he is the Secretary of the said intervening petitioner, Royal Trust Company, that he has read the intervening petition and that the allegations therein contained are true, except such as are stated to be made on information and belief, and that as to them, he believes them to be true.

A. A. JOHNSTON.

Subscribed and sworn to before me, this 18th day of February, A. D. 1909.

[SEAL.] GEO. T. PARKHURST,
Notary Public.

194 List of Securities and Cash on Deposit with Royal Trust Company as Trustee of the Reserve Fund of the American Guaranty Company.

Bonds.

5	United States 3% Bonds	$5,000.00
2	United States 3% Bonds	40.00
1	United States 3% Bonds	500.00
31	United States #5 Bonds	3,100.00
5	6% 1st Mtg. Spalding Mfg. Co. bonds	5,000.00
1	5% 1st Mtg. Chicago Auditorium Assn. bond	1,000.00
25	4% Consolidated Pere Marquette R. R. Co. bonds	25,000.00

1	3½%	Water Loan Commonwealth, of Massachusetts Bond	1,000.00
1	4½%	Funding & Real Estate Mtg. Western Union Telegraph Co. Bond	1,000.00
1	4%	Gold Debenture, New York & Hudson River Rd. Co. Bond	1,000.00
1	4%	Lake Shore & Michigan Southern Ry. Co. Bond.	1,000.00
1	3½%	1st Mtg. Baltimore & Ohio R. R. Co. S. W. Division, Bond	1,000.00
1	4%	1st Mtg. Atchison, Topeka & Santa Fe Ry. Co. (Eastern Okla. Division) Bond	1,000.00
1	3½%	Guaranteed Gold Trust Certificate of the Pennsylvania Co.	1,000.00
1	4%	5.20 Collateral Trust, Louisville & Nashville Rd. Co. Bond	1,000.00
1	4%	Erie Rd. Co. Penn.'s Collateral Bond	1,000.00
9	3½%	Consolidated Mtg. New York Central & Hudson River Co. Gold Bonds	9,000.00
5	4%	1st Mtg. St. Louis, Iron Mountain & Southern Ry. Co. Gold Bonds	5,000.00
5	4%	General Mtg. Atchison, Topeka & Santa Fe Ry. Co. 100 year Gold Bonds	5,000.00
1	4%	1st Mtg. Chicago Jun-tion Rd. Co. 40 year Gold Bond	1,000.00
5	4%	First & Refunding Mtg. Chicago, Rock Island & Pacific Ry. Co. Gold Bonds	5,000.00
5	4%	Sanitary District of Chicago Municipal Bonds.	5,000.00
10	4%	South Park Commissioners' (Chicago) 8 year Park Bonds	10,000.00

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4	5%	Dakota & Great Southern Ry. Co. 30 Year Gold Bonds	4,000.00
16	3½%	1st Mtg. Illinois Central Rd. Co. Purchased Lines, Gold Bonds	16,000.00
5	6%	1st Mtg. City of Lincoln Gas Co. Gold Bonds.	5,000.00
5	5%	1st Mtg. Topeka Ry. Co. Gold Bonds	5,000.00
10	6%	1st Mtg. United Gas Co. Gold Bonds	5,000.00
10	5%	1st & Refunding Mtg. Peoria Ry. Co. Gold Bonds	10,000.00
5	4%	Lake Shore & Michigan Southern Ry. Co. 25 Year Gold Bonds	5,000.00
3	4%	Refunding Allen County Ky. Bonds	3,000.00
1	4%	Independent School District School Building Bond, West Des Moines, Ia	1,000.00
1	4%	Refunding Bond, Lisbon, Iowa	500.00
1	3½%	Refunding Bond, Kenosha, Wis.	100.00
1	4½%	Joint School District #1, School Building Bond, Viroqua, Wis.	100.00
10	6%	1st Mtg. Atlas Lumber & Shingle Co. Bonds	5,000.00
5	6%	1st Mtg. Edison Light & Power Co. Bonds	5,000.00
11	4%	General Corporate City of Chicago Bonds	11,000.00

4	(2 4½ and 2 4%)	Sanitary District of Chicago Municipal Bonds	4,000.00
5	4%	Cons. Mtg. Pittsburg, Cincinnati, Cleveland & St. Louis Ry. Co. Bonds	5,000.00
5	4%	Refunding Oregon Short Line Bonds	5,000.00
5	4%	Chicago, Burlington & Quincy Rd. Co. Illinois Division Bonds	5,000.00
5	4%	1st Mtg. Transcontinental Short Line, Atchison, Topeka & Santa Fe Ry. Co. Bonds	5,000.00
5	4%	General Mtg. Atchison, Topeka & Santa Fe Ry. Co. Bonds	5,000.00
10	4%	Dock & Wharf Bonds, Marinette, Wis.	10,000.00
9	5%	Sewer Bonds, Ft. Smith, Ark.	9,000.00
6	5%	Northwestern Gas Light & Coke Co. Bonds	3,000.00
5	5%	1st Mtg. Muncie (Ind.) Electric Light Co. Bonds	5,000.00
10	5%	1st Mtg. Chicago City Ry. Co. Bonds	10,000.00
5	5%	Refunding Mtg. Peoples Gas Light & Coke Co. Bonds	5,000.00
5	5%	1st Mtg. North Shore Electric Co. Bonds	5,000.00
2	6%	Refunding Inland Steel Co. Bonds	2,000.00
6	4%	1st and Refunding Mtg. Chicago, Rock Island & Pacific Ry. Co. Bonds	6,000.00
1	5%	1st Mtg. Commerce Building Co. (Kansas City, Mo.) Bond	1,000.00

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Note and Mortg. of Chambers, Logan Pierce. Date 2-26-07. Due 2-26-12.	1,000.00
Note and Mortg. of James L. Bigelow. Date 4-4-98. Due 4-4-10.	3,500.00
Note and Mortg. of Florence H. Steele. Date 10-21-96. Due 11-3-12.	5,000.00
Note and Mortg. of Florence H. Steele. Date 4-15-04. Due 4-15-10.	1,500.00
Note and Mortg. of John B. Huling. Date 7-28-97. Due 7-28-12.	2,750.00
Note and Mortg. of Mary C. Hatfield. Date 7-12-98. Due 7-12-13.	2,5000.00
Note and Mortg. of Wm. W. Newberry. Date of 2-14-06. Due 2-14-11.	16,000.00
Note and Mortg. of Ellen E. Fitch. Date 3-8-06. Due 3-8-10.	1,000.00
Note and Mortg. of Caroline A. and Lewis W. Pitcher. Date 4-8-99. Due 4-8-11.	13,500.00

197 *3% Certificates of Deposit.*

First Trust & Savings Bank:

#15796	Date 1-11-09. Due 7-11-09.	$10,456.78
#15797	Date 1-11-09. Due 7-11-09.	10,456.78
#15798	Date 1-11-09. Due 7-11-09.	10,456.78
#14611	Date 8-21-08. Due 2-21-09.	10,302.25
#14612	Date 8-21-08. Due 2-21-09.	10,302.25
#14613	Date 8-21-08. Due 2-21-09.	10,302.25

Royal Trust Company:

#5729	Date 1-28-09. Due 7-28-09.	11,107.07
#5735	Date 2-1-09. Due 8-1-09.	10,452.78

Continental National Bank:

#1617	Date 1-28-09. Due 7-28-09.	10,471.59
#1618	Date 1-28-09. Due 7-28-09.	10,471.59
#1619	Date 1-28-09. Due 7-28-09.	10,471.60
#1620	Date 1-28-09. Due 7-28-09.	2,094.31
#1621	Date 1-28-09. Due 7-28-09.	10,439.61
#1622	Date 1-28-09. Due 7-28-09.	10,439.61

#1623 ..... Date 1-28-09. Due 7-28-09.	10,439.61
#1624 ..... Date 1-28-09. Due 7-28-09.	21,732.39
Cash	100,232.25
Total	$266,719.50

(Endorsed:) Filed Feb. 19, 1909, H. S. Stoddard, Clerk.

198 And on to-wit: the fifth day of March, 1909, come the Royal Trust Company by its solicitor and filed in the clerk's office of said Court in said entitled cause its certain Answer to the petition of Receiver filed herein on the thirteenth day of February, 1909. Said Answer is in the words and figures following to-wit:

Answer of Royal Trust Company to Petition of Receiver.

Filed February 13, 1909.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof.

Gen. No. 29336. In Equity.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Petition of Edwin A. Potter, Receiver, v. Royal Trust Company, to Require Latter to Turn Over Funds in Its Hands.

Answer of Royal Trust Company.

Now comes the Royal Trust Company and answers the said petition of Edwin A. Potter, Receiver, filed herein February 13, 1909, as amended on February 23, 1909, and for answer respectfully submits and shows to the court as follows:

1. That respondent, Royal Trust Company, is a corporation duly organized under the laws of the State of Illinois, for the purpose and with the corporate power and authority of conducting a banking business, of performing the duties of a trustee, and of doing all other acts and things usual and appropriate to the banking

199 and trust business, and that on, to-wit: the tenth day of April, 1899, being thus organized and being then engaged in said business, it made and entered into with said American Guaranty Company of Chicago a certain contract and agreement bearing date of that day, a true copy of which is set out in paragraph four of the said petition of said Receiver, that afterwards, on or about February 27, 1902, the Directors of said American Guaranty Company of Chicago adopted the resolution providing for the amendment of said contract of April 10th, 1899, as in said

petition alleged in said paragraph four, and a copy of said resolution was shortly thereafter delivered to this respondent and by it attached to said contract, dated April 10th, 1899.

11. That at the time of the making of said contract dated April 10th, 1899, this respondent entered into an agreement with said American Guaranty Company of Chicago, as to the compensation which this respondent should receive for the performance of the trusts provided by it to be performed in said contract, which agreement was dated April 10th, 1899, and is in words and figures as follows:

200 This Agreement, dated this 10th day of April, 1899, by and between the American Guaranty Company, of Chicago, formerly known as the American Investment Guaranty Company, a corporation duly organized under the laws of the state of West Virginia, with general offices in the city of Chicago, State of Illinois, party of the first part and Royal Trust Company, a corporation organized and doing business under the laws of the state of Illinois, party of the second part, Witnesseth:

That the party of the first part, in consideration of the services agreed to be performed by the party of the second part hereto in a certain contract between the parties hereto, dated April 10th, 1899, (providing that the party of the second part shall act as depository of the reserve fund of the party of the first part hereto, accumulated for the purpose of meeting accruing obligations undertaken in its special contracts) hereby agrees to pay to the party of the second part hereto until such time as said reserve fund shall exceed $100,000, $500.00 per annum, payable semi-annually in advance and whenever the examination by said Royal Trust Company (provided for in said agreement herein referred to) shows that the said reserve fund has been increased $50,000 over said amount of $100,000; in that case the party of the first part hereby agrees to pay in addition to the above to the said Royal Trust Company the sum of $250.00 per year for every increase of $50,000 from the date of such examination, payable semi-annually in advance.

In Consideration of the above, the party of the second part hereto agrees to perform the covenants and conditions on its part entered into in the contract of even date herewith herein referred to.

In Witness Whereof, the parties hereto have respectively caused these presents to be signed in their respective corporate names by their respective presidents, the first party signing by its
201 vice-president and their corporate seals to be hereto affixed and attested by their respective secretaries on the day and year first above written.

AMERICAN GUARANTY COMPANY.
By CHAS. L. FUREY, *Vice-President.*

Attest:
[SEAL.] L. W. PITCHER, *Secretary.*

ROYAL TRUST COMPANY,
By J. B. WILBUR, *President.*

Attest:
[SEAL.] A. A. JOHNSON, *Secretary.*

STATE OF ILLINOIS,
County of Cook, ss:

I, Harry E. Ambler, a Notary Public, in and for the County and State aforesaid, do hereby certify that Charles L. Furey, Vice-president of the American Guaranty Company of Chicago (formerly known as the American Investment Guaranty Company) and Lewis W. Pitcher, Secretary thereof, both personally known to me to be such officers, and to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument by order of the Board of Directors of said American Guaranty Company, as their free and voluntary act and as the free and voluntary act and deed of the said American Guaranty Company, of Chicago, for the uses and purposes therein set forth, and the said Lewis W. Pitcher, being duly sworn by me deposes and says that the seal affixed to the said instrument is the corporate seal of the said American Guaranty Company of Chicago, and was by him affixed thereto in pursuance of the powers and authority granted him by the Board of Directors and the by-laws of said Company.

Given under my hand and Notarial Seal this 10th day of April, A. D. 1899.

[SEAL.] HARRY E. AMBLER,
Notary Public.

202 III. That soon after the making of said contract dated April 10, 1899, for the creation and deposit with this respondent as trustee of said reserve fund, for the security of said contract holders of said Guarantee Company, said Guarantee Company caused to be delivered to this respondent certain securities and moneys theretofore received and held by the Chicago Title & Trust Company a corporation of Illinois, certain securities and moneys which this respondent was then informed had been delivered to said Chicago Title & Trust Company, as trustee, for the purposes specified in said contract last mentioned and the same were delivered to this respondent as its successor in trust—the total face value of said securities and moneys was $48,067.68.

IV. That after the making of said contract last mentioned, the Guaranty Company continued to issue and did issue, to various persons, special contracts known as investment and service contracts and income contracts for periods of ten, fifteen and twenty years respectively, copies of the forms of which contracts are attached to said petition of said receiver, and such contracts were continuously issued and sold by said Guaranty Company thereafter and until about the time of its dissolution as in said petition alleged.

V. That under and in pursuance of the first provision of said contract of April 10, 1899, this respondent has annually caused skilled accountants, to-wit: the accounting firm of Haskins & Sells, to examine the books and records of said American Guaranty Company, pertaining to its special contracts, and to compute and report to this respondent the amount of the reserves required according

to the table of reserves adopted by said Guaranty Company, to be delivered by said Guaranty Company to and be held by this respondent under the terms of said contract for the security of the holders of said special contracts and it has furnished annually to said Guaranty Company a statement of the result of said examination, said reports being made as of the last day of February,
203 for the years 1900 and 1908, both inclusive; that said reports each consisted of two parts, namely,

(*a*) A complete detailed tabulation and list of all of the special contracts therefore issued and then outstanding giving the kind of each of such contracts, its term, its number, its amount, the number of months in force, the amount and rate of the liability of said Guaranty Company thereunder, the amount loaned, if any, upon said contract, and the State in which the person to whom said contract was issued resided, together with a list of canceled contracts and the amount of said Guaranty Company's liability thereon, with a final summary of the amounts of said Guaranty Company's liabilities and of its loans respectively and all such cancellations all of which will more fully appear from the following copy of the first half of the first page of said report of Haskins & Sells for the year ending February 29, 1908, which is as follows:

CHICAGO, —— —, 190–.

Statement and Report of Liability on Special Contracts to — by the American Guaranty Company, 171 La Salle Street.

204	Number of contract.	Amount of contract.	Mos. in force.	Liability. Rate.	Amount.		Loans.	
S. D. 15 yrs.....	23638	1000	36	56	5600			Ala.
S. D. 10–20 yrs..	50403	10000	"	Man	96000	Con't	96000	
"	50414	10000	"	"	96000	Con't		
"	50415	5000	"	"	48000	Con't		
"	50417	10000	"	"	96000	Con't	96000	
Inc. 15 A	3572	2000	"	.....	13104	.....		Ark.
S. D. 10–20 yrs..	15558	1000	108	Man	57150	25.00		Ariz.
Inc. 15 A.....	1964	2000	36	.....	13104	.....	6336	
" " "	3701	2000	24	.....	6336	.....	6336	
" " "	3759	2000	24	.....	6336			
" " "	4138	2000	"	.....	6336	.....	6336	
" " "	4139	2000	"	.....	6336	.....	6336	
F. F. 20	3263	2120	156	422	89464			
" "	3453	1680	"	"	70896			
	3459	2400	"	"	101280			
	4046	2540	144	370	93980			
	4157	2200	156	422	92840	.....	80974	
	10102	2220	"	"	93684			
S. D. 20 yrs.....	14502	2000	132	302.50	60500			
S. D. 10–20 yrs..	15428	1000	120	Man	69000	30.00		
" " " ..	15483	1000	108	"	57150	25.00		
" " " ..	15485	1000	"	"	58500	30.00		
S. D. 20 yrs	15517	1000	"	202.50	20250			
" "	15535	1000	"	"	20250			
" "	15552	1000	"	"	20250			

205 (*b*) A certificate of said accountants of such examination and of the amount of the Company's gross liability under such special contracts, the amount of the loans thereon, as evidenced

by the notes of individuals, and the amount of excess service dividends paid under such contracts which were treated as loans, all of which certificates are substantially in the form of that for the year ending February 29, 1908, which last certificate is as follows:

Haskins & Sells,
Certified Public Accountants,
30 Broad Street, New York.

LONDON, E. C. 30 Coleman Street.

Chicago, Marquette Building.	St. Louis, Third National Bank Building.	Cleveland, Williamson Building.	Pittsburg, Farmers Bank Building.

Cable Address "Hasksells."

We have made an examination of the records of the American Guaranty Company, of Chicago, Illinois, containing its Special Contracts, and

We hereby certify that the detailed list hereto attached correctly states, according to these records:

First. That the Company's gross liability under these contracts, in accordance with the records was, as of date February 29, 1908, $1,089,295.04, and that between February 29, and the date of our examination, contracts to the amount of $19,249.73, less loans thereon amounting to $5,790.76 were surrendered and cancelled.

Second. That the loans as evidenced by notes of individuals were at the date of our examination $219,762.68. (At February 29, 1908, these loans amounted to $212,059.49.)

Third. That the excess service dividends paid under the
206 contracts which are treated as loans were, at the date of our examination $49,936.38. (At February 29, 1908, the excess service dividends amounted to $50,551.65.)

HASKINS & SELLS,
Certified Public Accountants.

Chicago, April 23, 1908.

VI. That each year upon the receipt of such tabulated statement and certificate of said accountants, this respondent notified said Guaranty Company of the total amount of securities and moneys required to be in said trust fund with your respondent, to meet the liabilities of said Guaranty Company under its said special contracts, according to the terms thereof, and the terms of said contract of April 10, 1899, and thereupon in each year, said Guaranty Company has turned over to, and deposited with, this respondent, as trustee under said contract, such additional amount in cash or securities, as added to the amount of said fund and securities then in the hands of this respondent, would fully equal the total amount required, as shown by said report and certificate of said accountants.

For example, in the tabulated statement and certificate of said

Haskins & Sells, for the year ending February 29, 1908, the gross liability of said Guaranty Company, under its special contracts was..... $1,089.295.04
75%, being the loan or withdrawal value is..... 816,971.28
The total amount of loans and excess service dividends, treated as loans, was $262,611.14
75% of cancellations, less loans thereon..... 10,094.23
272,705.37

Leaving amount of fund required to be in the hands of the trustee, for the security of said special contracts outstanding February 29, 1908, as per the terms thereof,..... $544,265.91

207 That said report of said accountants was not made until about May 1, 1908, that the amount of moneys, and securities held in trust by this respondent under said agreement of April 10, 1899, on February 29, 1908, was the sum of $506,238.26, and that upon the receipt of said report by said accountants, said Guaranty Company was notified by this respondent that there was required to be added to said fund in moneys, cash or securities, at least the additional sum, in the aggregate at their face value of $32,624.98, the difference being covered by interest collected in the meantime which notice to said Guaranty Company was dated May 21, 1908, and was as follows:

MAY 21, 1908.

American Guaranty Company, 171 La Salle Street, Chicago.

GENTLEMEN: We have received the following report from Messrs. Haskins & Sells in regard to the examination of your records;

"We have made an examination of the records of the American Guaranty Company, of Chicago, Illinois, containing its special contracts, and

We hereby certify that the detailed list hereto attached correctly states, according to these records:

208 First. That the Company's gross liability under these contracts, in accordance with the records was, as of date February 29, 1908, $1,089,295.04 and that between February 29, and the date of our examination, contracts to the amount of $19,-249.73, less loans thereon amounting to $5,790.76 were surrendered and cancelled.

Second. That the loans as evidenced by notes of individuals were, at the date of our examination, $219,762.68. (At February 29, 1908, these loans amounted to $212,059.49.)

Third. That the excess service dividends paid under the contracts which are treated as loans were, at the date of our examination $49,936.38. (At February 29, 1908, the excess service dividends amounted to $50,551.65.)

HASKINS & SELLS,
Certified Public Accountants."

According to the foregoing report there is a gross liability of $1,089,295.04, 75% of which amounts to $816,971.28.

Reducing this according to your request by the amount of contracts surrendered and cancelled since February 29, less the loans thereon to the extent of 75% of the balance, making an amount of....		10,094.23
Also reducing it by the amount of your loans on February 29, aggregating.....		212,059.49
Also reducing it by the amount of your excess service dividends treated as loans on February 29 aggregating		50,551.65
		$272,705.37
There remains due to your Trust fund on deposit with us.....	$544,265.91	
There is now on deposit with us in cash, securities, etc.	511,640.93	
Leaving a balance to be deposited with us by you in your trust fund of.....	32,624.98	
your trust fund of		32,624.98

Very truly yours,

ROYAL TRUST COMPANY, *Trustee,*
By A. A. JOHNSTON, *Secretary.*

that afterwards on June 9, 1908, said Guaranty Company did deliver to your respondent additional securities and moneys of the total amount of $39,700, which were received by this respondent under said trust contract of April 10, 1899, and added to said trust fund and reserve.

That thereupon in further pursuance of the terms of said trust contract of April 10, 1899, this respondent gave to said Guaranty Company a written statement as to the condition of said fund dated June 16, 1908, as follows:

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JUNE 16, 1908.

To whom it may concern:

In accordance with our custom and agreement we caused an examination to be made of the records of the American Guaranty Company of Chicago showing Special Contracts in force February 29th, 1908, which had been in force one year and over, and upon which there was a liability according to the terms and conditions of said contracts, and from said examination and report, which has been completed and delivered, we find that we have in our possession on the date of this letter cash and securities to the credit of the Reserve Fund accumulating in our hands, the face value of which is in excess of the amount required on February 29th, 1908, under the terms and conditions of said Special Contracts.

The reserve fund consists of cash, time loans with collateral,

mortgages on real estate, government and other interest bearing bonds.

Yours very truly,

ROYAL TRUST COMPANY, *Trustee,*
By A. A. JOHNSTON, *Secretary.*

VII. That this respondent has each year upon receipt of said report and certificate of said accountants, taken the same action as described in the last paragraph as to the report and certificate of 1908, and that in each case additional funds and securities have been added by said Guaranty Company to said trust, and reserve fund in the hands of this respondent, and that at no time since the making of said contract of April 10, 1899, and the receipt of said trust fund from said Chicago Title & Trust Company, have any securities been withdrawn therefrom by said Guaranty Company, without the substitution therefor, at the same time, of other securities of at least equal face value, and that at no time has the
210 total of said reserve and trust fund been reduced, but the same has been from year to year invariably increased and at each annual examination by said accountants, it has been increased to equal the amount shown by such accountants' report required to make said trust and reserve fund fully equal to the amount required under the terms of said Special Contracts to be kept with the trustee as security for their fulfillment.

VIII. That this respondent has at all times since the making of said agreement concerning said reserve and trust fund received and held said fund under the terms of said contract, as a fund for the benefit of the holders of said Special Contracts and as a trust fund in its hands for the security of said Special Contracts, and it has endeavored in all respects to protect and conserve said fund for the benefit of such contract holders; and as such securities were from time to time delivered to it by said Guaranty Company, with very few, if any, exceptions, such securities when payable to the order of said Guaranty Company, were, before such delivery to this respondent, endorsed with a stamp endorsement, prepared by said Guaranty Company and affixed by its treasurer, endorsing such securities to the order of this respondent as "Royal Trust Co., Trustee," and that such securities as they have matured from time to time, have been collected by this respondent and the proceeds thereof held in said fund until re-invested with the consent, or under the direction of the proper officials of said Guaranty Company.

IX. This respondent admits that at the time of the filing of said petition on February 13, 1909, it had in its possession in said reserve and trust fund, cash and other securities of the aggregate face value of $566,719.50, as itemized in said letter set out in paragraph
211 4 of said petition, except that the amount of said note and mortgage of said Mary C. Hatfield, on page 8 of said petition, is, by a clerical error, given as $25,000, instead of $2500, and that said fund is now made up as more particularly described in the following:

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SCHEDULE "A."

List of Securities and Cash on Deposit with Royal Trust Company, as Trustee of the Reserve Fund of The American Guaranty Company, February 19, 1909.

Bonds.

5 United States 3% Bonds	$5,000.00
2 United States 3% Bonds	40.00
1 United States 3% Bonds	500.00
31 United States 3% Bonds	3,100.00
5 6% 1st Mtg. Spalding Mfg. Co. bonds	5,000.00
1 5% 1st Mtg. Chicago Auditorium Assn. bond	1,000.00
25 4% Consolidated Pere Marquette R. R. Co. bonds	25,000.00
1 3½% Water Loan Commonwealth of Massachusetts Bond	1,000.00
1 4½ Funding & Real Estate Mtg. Western Union Telegraph Co. Bond	1,000.00
1 4% Gold Debenture, New York & Hudson River Rd. Co. Bond	1,000.00
1 4% Lake Shore & Michigan Southern Ry. Co. Bond	1,000.00
1 3½% 1st Mtg. Baltimore & Ohio R. R. Co. S. W. Division Bond	1,000.00
1 4% 1st Mtg. Atchison, Topeka & Santa Fe Ry. Co. (Eastern Okla. Division) Bond	1,000.00
1 3½% Guaranteed Gold Trust Certificate of the Pennsylvania Co.	1,000.00
1 4% 5.20 Collateral Trust, Louisville & Nashville Rd. Co. Bond	1,000.00
1 4% Erie Rd. Co. Penn.'s Collateral Bond	1,000.00
9 3½% Consolidated Mtg. New York Central & Hudson River Co. Gold Bonds	9,000.00
5 4% 1st Mtg. St. Louis, Iron Mountain & Southern Ry. Co. Gold Bonds	5,000.00
5 4% General Mtg. Atchison, Topeka & Santa Fe Ry. Co. 100 year Gold Bonds	5,000.00
1 4% 1st Mtg. Chicago Jun-tion Rd. Co. 40 year Gold Bond	1,000.00
5 4% First & Refunding Mtg. Chicago, Rock Island & Pacific Ry. Co. Gold Bonds	5,000.00
5 4% Sanitary District of Chicago Municipal Bonds	5,000.00
10 4% South Park Commissioners' (Chicago) 8 year Park Bonds	10,000.00

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4 5% Dakota & Great Southern Ry. Co. 30 Year Gold Bonds	4,000.00
16 3½% 1st Mtg. Illinois Central Rd. Co. Purchased Lines, Gold Bonds	16,000.00
5 6% 1st Mtg. City of Lincoln Gas Co. Gold Bonds	5,000.00
5 5% 1st Mtg. Topeka Ry. Co. Gold Bonds	5,000.00

10	6%	1st Mtg. United Gas Co. Gold Bonds	5,000.00
10	5%	1st & Refunding Mtg. Peoria Ry. Co. Gold Bonds	10,000.00
5	4%	Lake Shore & Michigan Southern Ry. Co. 25 Year Gold Bonds	5,000.00
3	4%	Refunding Allen County Ky. Bonds	3,000.00
1	4%	Independent School District School Building Bond, West Des Moines, Ia.	1,000.00
1	4%	Refunding Bond, Lisbon, Iowa	500.00
1	3½%	Refunding Bond, Kenosha, Wis.	100.00
1	4½%	Joint School District #1, School Building Bond, Viroqua, Wis.	100.00
10	6%	1st Mtg. Atlas Lumber & Shingle Co. Bonds	5,000.00
5	6%	1st Mtg. Edison Light & Power Co. Bonds	5,000.00
11	4%	General Corporate City of Chicago Bonds	11,000.00
4	(2 4½ and 2 4%)	Sanitary District of Chicago Municipal Bonds	4,000.00
5	4%	Cons. Mtg. Pittsburg, Cincinnati, Cleveland & St. Louis Ry. Co. Bonds	5,000.00
5	4%	Refunding Oregon Short Line Bonds	5,000.00
5	4%	Chicago, Burlington & Quincy Rd. Co. Illinois Division Bonds	5,000.00
5	4%	1st Mtg. Transcontinental Short Line, Atchison, Topeka & Santa Fe Ry. Co. Bonds	5,000.00
5	4%	General Mtg. Atchison, Topeka & Santa Fe Ry. Co. Bonds	5,000.00
10	4%	Dock & Wharf Bonds, Marinette, Wis.	10,000.00
9	5%	Sewer Bonds, Ft. Smith, Ark.	9,000.00
6	5%	Northwestern Gas Light & Coke Co. Bonds	3,000.00
5	5%	1st Mtg. Muncie (Ind.) Electric Light Co. Bonds	5,000.00
10	5%	1st Mtg. Chicago City Ry. Co. Bonds	10,000.00
5	5%	Refunding Mtg. Peoples Gas Light & Coke Co. Bonds	5,000.00
5	5%	1st Mtg. North Shore Electric Co. Bonds	5,000.00
2	6%	Refunding Inland Steel Co. Bonds	2,000.00
6	4%	1st and Refunding Mtg. Chicago, Rock Island & Pacific Ry. Co. Bonds	6,000.00
1	5%	1st Mtg. Commerce Building Co. (Kansas City, Mo.) Bond	1,000.00

214 The foregoing bonds of the total face value of $240,700. are all payable to bearer.

Notes & Mortgages.

1.	Note and Mortg. of Chambers, Logan Pierce Date 2-26-07. Due 2-26-12.	1,000.00
2.	Note and Mortg. of James L. Bigelow Date 4-4-98. Due 4-4-10.	3,500.00

3. Note and Mortg. of Florence H. Steele..... 5,000.00
Date 10-21-96.
Due 11-3-12.
4. Note and Mortg. of Florence H. Steele..... 1,500.00
Date 4-15-04.
Due 4-15-10.
5. Note and Mortg. of John B. Huling..... 2,750.00
Date 7-28-97.
Due 7-28-12.
6. Note and Mortg. of Mary C. Hatfield..... 2,500.00
Date 7-12-98.
Due 7-12-13.
7. Note and Mortg. of Wm. W. Newberry..... 16,000.00
Date of 2-14-06.
Due 2-14-11.
8. Note and Mortg. of Ellen E. Fitch..... 1,000.00
Date 3-8-06.
Due 3-8-10.
9. Note and Mortg. of Caroline A. and Lewis W. Pitcher. 13,500.00
Date 4-8-99.
Due 4-8-11.

215 The foregoing nine notes and mortgages, for the aggregate principal amount of $46,750, were all, at the time of their delivery to the Royal Trust Company, Trustee, either payable to bearer or by endorsement of said Guaranty Company made payable to the order of this respondent.

Nos. 1, 8 and 9 supra, were made payable to the order of the makers respectively, and by such makers endorsed in blank.

No. 3 supra, was made payable to the order of said Guaranty Company, as American Investment Guaranty Company and was and is endorsed as follows:

"American Investment Guaranty Co. L. W. Pitcher, Sec'y."

and the coupons attached thereto were and are endorsed by stamp as follows:

"Pay to order Royal Trust Company, Trustee, Chicago. American Guaranty Company of Chicago, J. L. Bigelow, Treas."

No. 4 supra, was at the time of its delivery, and is now, endorsed by stamp as follows:

"Pay to order Royal Trust Company, Trustee, Chicago. American Guaranty Company of Chicago, J. L. Bigelow, Treas."

below which is written "James L. Bigelow, Treas."

All the coupons attached to last mentioned note are likewise endorsed by stamp the same as the principal note.

No. 2 supra, was and is endorsed:

"American Guaranty Co. of Chicago, By Percival Steele, Pres't."

and its coupons are endorsed

216 "Pay to order Royal Trust Company, Trustee, Chicago, American Guaranty Co. of Chicago. L. W. Pitcher, Sec'y."

No. 6 supra, is endorsed same as No. 2 but coupons are endorsed: "Pay to order Royal Trust Company, Trustee Chicago, American Guaranty Co. of Chicago. J. L. Bigelow, Treas."

No. 7 supra, is endorsed same as endorsement on coupons No. 6 with this endorsement below:

"All prior endorsements guaranteed, J. L. Bigelow, Treas."

No. 5 supra, originally made payable to order of said Guaranty Company, as the American Investment Guaranty Company and by it endorsed to the order of the Illinois Trust & Savings Bank and then endorsed by said Illinois Trust & Savings Bank to the order of Chicago Title & Trust Company, Trustee, and endorsed by the latter to the order of Royal Trust Company, Trustee, Coupons attached to said note are payable to the order of the makers and are by them endorsed in blank.

3% Certificates of Deposit.

First Trust & Savings Bank:

#15796	Date 1-11-09	
	Due 7-11-09	$10,456.78
#15797	Date 1-11-09	
	Due 7-11-09	10,456.78
#15798	Date 1-11-09	
	Due 7-11-09	10,456.78

The foregoing three certificates of Deposit for $10,456.78 each were issued payable to the order of said Guaranty Company and at the time of their delivery to this respondent, were severally endorsed as follows:

"Pay to the order of Royal Trust Company, Trustee. American Guaranty Co., L. W. Pitcher, Sec'y."

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#14611	Date 8-21-08	
	Due 2-21-08	$10,302.25
#14612	Date 8-21-08	
	Due 2-21-09	10,302.25
#14613	Date 8-21-08	
	Due 2-21-09	10,302.25

Said three Certificates of Deposit last above described have matured and the amount thereof, namely $31,370.34 *were* paid to this respondent by said First Trust & Savings Bank, March 1, 1909.

Royal Trust Company:

#5735	Date 1-28-09	
	Due 7-28-09	$11,107.07
#5735	Date 2-1-09	
	Due 8-1-09	10,452.78

Said two certificates of Deposit last named are payable to the order of "Royal Trust Company, Trustee."

Continental National Bank:

#1617	Date 1-28-09 Due 7-28-09	$10,471.59
#1618	Date 1-28-09 Due 7-28-09	10,471.59
#1619	Date 1-28-09 Due 7-28-09	10,471.60
#1620	Date 1-28-09 Due 7-28-09	2,094.31
#1621	Date 1-28-09 Due 7-28-09	10,439.61
#1622	Date 1-28-09 Due 7-28-09	10,439.61
#1623	Date 1-28-09 Due 7-28-09	10,439.61
#1624	Date 1-28-09 Due 7-28-09	21,732.39

Said last eight Certificates of Deposit were issued to the order of Royal Trust Company Trustee, by the Continental National Bank at this respondent's request on January 28, 1909, in lieu of other Certificates of Deposit of said Bank of an equal aggregate amount, which former Certificates of Deposit had been issued to the order of said Guaranty Company and by it endorsed to the order of this respondent as "Royal Trust Company, Trustee," and such request was made by this respondent for the purpose of clearly segregating and identifying from other moneys in said Continental National
218 Bank the moneys *in said Continental National Bank the moneys* represented by said prior Certificates of Deposit as a part of the said reserve and trust fund.

Cash upon which interest is paid at the usual rate of two per cent. per annum $131,602.59.

That the nature and face amount of said securities, and cash now in said fund are as shown in the following:

Summary.

United States Bonds	$8,640.00
Municipal Railroad, Street Railway and other bonds	240,700.00
Notes and Mortgages	46,750.00
Certificates of Deposit @3%	139,026.91
Cash, drawing 2% interest	131,602.59
Total	$566,719.50

X. That all of the foregoing securities and cash are held by this respondent under the terms of its said contract with said Guaranty Company for the benefit of the holders of the Special Contracts listed by number and described in the report of said accountants as of February 29, 1908, and that as this respondent is informed and believes, the face value of said trust fund is equal to the amount required by its said contract with said Guaranty Company to be

deposited in said trust fund for the redemption of said Special Contracts last mentioned, being those in force on February 29, 1908, and that the owners and holders of said Special Contracts listed by number in said tabulated report of said accountants last mentioned, have, as this respondent is advised by counsel, and as it has at all times understood and believed, an exclusive preferential interest in and to said reserve and trust fund to the extent of their respective claims against said Guaranty Company under their respective Special Contracts as shown by the terms of said contracts and that neither said receiver nor the holders of any other
219 contracts issued by said Guaranty Company, nor any other creditors of said Guaranty Company, have any right to or interest in said reserve fund, unless and until the respective claims aforesaid of said contract holders shall have first been satisfied therefrom.

XI. That this respondent is informed and believes that the annual signed statement given by it to said Guaranty Company, addressed "to whom it may concern", and all substantially in the form of that dated June 16, 1908 aforesaid, were circulated by said Guaranty Company among its said contract holders secured by said reserve fund, and it caused the same, from time to time to be published and circulated among other persons whom it endeavored to procure to take like special contracts with said Guaranty Company.

This respondent is informed and believes that said American Guaranty Company was duly dissolved by decree of dissolution entered in the Circuit Court of Kanawha County, West Virginia, as in paragraph 1 of said petition alleged; that said petitioner was appointed as receiver in said above entitled cause by this court and has duly qualified as such as in paragraph 2 of said petition alleged.

This respondent has no knowledge as to what assets or effects, if any, said Guaranty Company had or has in said state of West Virginia or as to the conveyance by said Guaranty Company to said receiver by deed dated February 2, 1909, of all the assets and properties of said Guaranty Company as in said 2nd paragraph alleged.

220 XII. That this respondent has no knowledge as to the total amount of the contracts outstanding and in full force at the time of the appointment of said receiver, but it is informed and believes that the statements in said petition of the amounts and characters of such contracts are true; that it is informed and believes that the surrender value or loan value of some of said contracts have not been secured by the deposit of cash or securities by said Guaranty Company with this respondent; and that the holders of such contracts are not entitled to share in said reserve and trust fund until the claims against the same by the holders of the Special Contracts, described by number, amount and kind in said tabulated report and statement of said accountants as of February 29th, 1908, have been paid their pro rata shares thereof. That the Service Contracts, Investment Contracts and Income Contracts contain, each, an express provision that the Guaranty Com-

pany shall "*keep assigned, transferred and delivered in trust* sundry moneys or other securities, in an amount equal in the aggregate, to 75% of the surrender value or to the cash loan value, less loans thereon. The provision in each of said Service Contracts being substantially as follows, the form varying in its phraseology at different times:

"9. As security for the redemption of this contract, the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust with an institution legally empowered to act as such trustee, sundry moneys, or other securities, such as banks and trust companies, invest in first mortgages on real estate, or bonds issued by the United States of America, or Municipalities thereof, which shall constitute the reserve under this contract to such an extent as shall equal, in the aggregate, not less than 75% of the reserved value."

221 And, in the Investment Contracts, the provision is:

"1. As security for the redemption of this Indenture the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust, sundry moneys or other securities, such as banks and trust companies are authorized to invest in, first mortgages on real estate or bonds issued by the United States of America, or Municipalities thereof, to such an amount as shall equal, in the aggregate 75% of the surrender value of this obligation."

And, in said Income Contracts, the provision is as follows:

"SECTION 1. As security for the redemption of this contract the American Guaranty Company of Chicago (hereafter styled the Company) covenants and guarantees that it will keep on deposit, in trust, with an institution legally empowered to act as such trustee, cash, first mortgages on real estate, bonds issued by the United States of America, or Municipalities thereof, and such other securities as banks and trust companies invest in, to an amount equal to the cash loan value hereunder, less the amount of any unpaid loans hereon."

that as to said Income Contracts issued prior to 1906, the provision was that the security should equal 75% of the cash value of said contracts instead of the full cash loan value specified therein.

XIII. Respondent denies, on information and belief, that any of said Special Contracts provided "that the amount of the security so to be kept on deposit, in trust, shall be diminished to the extent of the amount of any unpaid loan made by said Guaranty Company on said contracts respectively," or that said Special Contracts contained any provision equivalent thereto.

XIV. Respondent admits that when said Guaranty Company made loans to its said contract holders they were required and did give their respective notes in which was contained the following provision:

"This note is secured by contract number — which is assigned and deposited as collateral security for the above named amount and interest thereon, and is a *first lien on the reserve fund accumulated*

or to accumulate under the terms of said contract in the hands of the trustee, its successors or assigns, who are hereby au-
222 thorized to release and to pay to the American Guaranty Company of Chicago, the above named sum, receipt of which is hereby acknowledged."

and that such loans now outstanding and owing by such contract holders to said Guaranty Company aggregate a large amount, the precise amount of which this respondent does not know and has no knowledge concerning beyond the amount shown by said report and certificate of said accountants as the true amount of such loans on said Special Contracts on February 29th, 1908.

Admits that said Income, Investment and Service Contracts issued by said Guaranty Company were substantially in the form shown by Exhibits B, C, and D attached to said petition.

XV. Respondent admits that there are included in the total amount of contracts issued by said Guaranty Company very many Investment, Service and Income Contracts which were issued less than two years prior to the date of the appointment of said petitioner receiver, and that the same aggregate a very large amount, the exact number and amount of which, however, this respondent has no knowledge, and respondent states, on information and belief, that the terms of said contracts are as stated in said petition, but respondent shows that a year has elapsed since the date of the last examination of the books and records of said Guaranty Company by said accountants for this respondent in pursuance of the terms of said contract of April 10th, 1899, and that under the terms of said contract respondent is required, within a reasonable time, to employ the services of a skilled accountant to make such examination at a cost not exceeding $50, and that respondent is ready to have such examination and report made as heretofore made by said accountants Haskins and Sells, and that such an examination would specifically and conclusively disclose and establish the precise Special Con-
tracts heretofore issued by said Guaranty Company, and now
223 outstanding, under which, by the terms of said contracts and the terms of said agreement with respondent of April 10th, 1899, additional moneys or securities are required to be placed in trust with respondent for the security of the obligations of the Guaranty Company upon such other Special Contracts as have now been in force more than two years, but which had not been in force two years on February 29th, 1908, and would also disclose which, if any, of the contracts in force on said date last mentioned and described in said last report of Haskins and Sells as of February 29th, 1908, have, since that time, been forfeited or surrendered, or upon which additional loans have been made upon the security thereof, and such an examination and report as aforesaid would determine accurately what Special Contracts are now entitled to share in and to be paid out of said reserve and trust fund in the hands of respondent, and what balance, if any, will remain after the full payment thereof. Respondent is informed and believes that upon such an accounting there will be found an additional amount required to be deposited by said Guaranty Company in said fund on account

of such Special Contracts which have become two years old since said last examination. Respondent admits that the fund now in its possession, as such reserve and trust fund, is not sufficient, by many thousands of dollars, to meet the liability of said Guaranty Company on said Special Contracts which have become two years old since February 29th 1908, and respondent is advised by counsel that the holders of such Special Contracts are not entitled to share in said trust fund, except after the claims of the holders of said prior Special Contracts listed in said last report of Haskins and Sells are fully paid.

224 XVI. That respondent is informed and believes that the claims of the creditors of said Guaranty Company, both those of contract holders and of general creditors, exclusive of the claims of the holders of contracts secured by said reserve fund in the hands of your respondent, are in the aggregate more than one hundred thousand dollars ($100,000.00).

That neither said creditors nor said receiver, as respondent is advised by counsel, have any interest in or any rights to the possession of said trust fund, but that said trust fund was created for and has been kept assigned to respondent as trustee and preserved by it for the express security and benefit of said Special Contract holders whose contracts were two years or more old on February 29th, 1908, and that by the dissolution of said Guaranty Company the term of said trust has been brought to an end, and no additions to the beneficiaries thereof, after such dissolution, have been or could be made, and that such beneficiaries are entitled to the execution of said trust, by the division among them, according to their respective interests, as fixed by their respective contracts of the trust fund in the possession of your respondent that more than 90% of said fund consists either of cash or of securities readily convertible into cash, and that the Special Contracts, on account of which said fund was created, are matters of record, as are the names and addresses of the persons holding the same, and that the distribution of said fund among the persons now entitled thereto can be accomplished easily, quickly and with but small expense, as will readily be seen by an examination of said securities, as is clearly shown by the description and summary of said securities hereinabove contained.

XVII. Respondent is ready and willing to deliver to a duly appointed successor in the trust the moneys and securities now
225 in said fund upon such a successor being appointed, with full power to accept said trust and to relieve this respondent from all further obligation in respect thereto. But this respondent is advised by counsel that it holds said funds and securities as trustee for, and is accountable to, the holders of said Special Contracts as the beneficiaries thereof, and that it can not by its action or consent relieve itself from the obligations of said trust nor safely surrender said fund to said receiver or to any other person claiming the same, except in pursuance of an order of Court, entered in a proper proceeding therefor that will bind all said beneficiaries and fully protect this respondent against the claims of any thereof to and upon said trust fund; that the interests of said receiver and of all other

creditors of said Guaranty Company, other than said beneficiaries, are hostile to the interests of such beneficiaries and they will not be bound by any order herein or in any other proceeding, unless they are parties to such proceeding, in person or by representation; and that the intervening petition of said A. E. Cross, et al. as a contract holders' committee, does not make such beneficiaries such parties to this proceeding as will bind them by any order which may be entered upon said receiver's petition; that this respondent, in its trust relation, to said beneficiaries, is bound to take notice of the defects in parties and upon the face of the record herein, and that the appearance of said Guaranty Company in the main case was entered by the same counsel who appear for said Contract Holders' Committee and in their intervening petition ask that the prayer of the petition of the receiver be granted; that because said prayer is adverse to the interests of said beneficiaries, no holder of such Special Contracts can, by voluntary submission bind any other contract holder
226 or affect the rights and interests of any other beneficiaries in and to said trust fund.

Therefore, the premises considered, this respondent prays the judgment of this Honorable Court that it can not be divested of its possession of said trust fund for the benefit of said special beneficiaries thereof, without a denial that said fund is a trust fund for the sole, primary benefit of said Special Contract Holders afore described, and that no adjudication thereon can be made so as to be effectual or to protect this respondent as such trustee, unless all said beneficiaries are, in person or by representation, properly before the Court, so as to be bound by the order of Court concerning said fund, and that, as respondent is advised, by counsel, this Honorable Court is without jurisdiction in the premises to make an order in this summary proceeding upon said receiver's petition that will bind the beneficiaries of said trust fund and protect this respondent in complying therewith.

And now, having fully answered, this respondent prays that said motion be denied and it be dismissed with its reasonable costs in that behalf wrongfully expended.

ROYAL TRUST COMPANY,
By A. A. JOHNSTON,
Its Secretary.

FRANK H. SCOTT,
EDGAR A. BANCROFT,
Its Solicitors.
R. D. STEPHENS,
Of Counsel.

227 STATE OF ILLINOIS,
County of Cook, ss:

A. A. Johnston, being first duly sworn, on oath does say he is secretary of the Royal Trust Company, the respondent to said petition, and is its agent in this behalf, that he has read the foregoing

answer of said respondent and that the statements therein contained are true to the best of his knowledge, information and belief.

A. A. JOHNSTON.

Subscribed and sworn to before me, this 5th day of March, 1909.

[SEAL.] GEO. T. PARKHURST,

Notary Public.

(Endorsed:) Filed March 5, 1909. H. S. Stoddard, Clerk.

228 And on to-wit: the twenty-third day of February, 1909, come the receiver in said entitled cause by his solicitor and filed in the clerk's office of said Court a certain petition for leave to amend petition filed on the thirteenth day of February, 1909. Said petition is in the words and figures following to-wit:

Petition of Edwin A. Potter, Receiver, for Leave to Amend Petition Filed February 13, 1909, Against Royal Trust Company.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. G. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Petition of Edwin A. Potter, Receiver, for Leave to Amend Petition Filed February 13, 1909, Against Royal Trust Company.

To the Honorable the Judges of said United States Circuit Court:

Now, comes Edwin A. Potter, Receiver herein, and referring to the petition filed by him herein on February 13, 1909, against the Royal Trust Company of Chicago, and by leave of court first had and obtained, now amends that part of Section 8 of said petition which reads as follows:

"That since February 29, 1908, said Guaranty Company made a large number of loans to contract-holders, who were entitled to the security, in manner aforesaid, so on deposit with said Royal Trust Company; that the loans so made aggregate many thousands of dollars, approximating, as near as your petitioner can now ascertain, over $75,000; that said Guaranty Company was entitled as hereinbefore stated, to a return out of said reserve or deposit fund amounting to the extent of the loans so made by it, but that no return thereof to the said Guaranty Company has been made."

229 by substituting therefor the following:

"That since February 29, 1908, said Guaranty Company loaned to holders of contracts then in force the sum of to-wit: $59,842.24,

of which sum $44,881.68 had previously been deposited by said Guaranty Company with said Royal Trust Company, and which sum of $44,881.68 is a part of the fund still, as aforesaid, held by said Royal Trust Company; that said $44,881.68 is 75 per cent. of the accumulated reserve, cash loan or surrender value of said contracts, in accordance with their respective terms and conditions, and which amount said Guaranty Company, under its said agreement with said Royal Trust Company, was then and still is entitled to withdraw from the funds so held by said Royal Trust Company; that since February 29, 1908, to-wit: 398 of said contracts were cancelled, in accordance with their terms and conditions, said 398 contracts having an accumulated reserve, or cash surrender value amounting to, to-wit: $97,568.71, which was paid by said Guaranty Company to the holders of said 398 contracts; that of said sum of $97,568.71 so paid by said Guaranty Company, there was on deposit with said Royal Trust Company, to-wit: $86,346.54, which deposit was made in accordance with the terms and conditions of said contracts, and which amount said Guaranty Company, under its said agreement with said Royal Trust Company, was and still is entitled to withdraw; that the total of said two items now amounts, and at the time of the appointment of the receiver herein amounted to the sum of $131,228.22, and that said receiver is entitled, under the terms of said agreement with said Royal Trust Company, to have the amount last aforesaid returned to him by said Royal Trust Company out of said reserve or deposit fund so held by said Royal Trust Company, but that no return of any part of said amount to said Guaranty Company has been made by
230 said Royal Trust Company or otherwise."

Respectfully submitted,

EDWIN A. POTTER,
Receiver of said American Guaranty Company of Chicago.

MAYER, MEYER & AUSTRIAN,
Sol's for Receiver.

STATE OF ILLINOIS,
County of Cook, ss:

Edwin A. Potter, being first duly sworn, upon oath deposes and says that the above and foregoing amendment to the petition filed by him herein on February 13, 1909, is true to the best of his knowledge, information and belief.

EDWIN A. POTTER.

Subscribed and sworn to by said Edwin A. Potter, before me, a Notary Public, this 23rd day of February, A. D. 1909.

[SEAL.] FRED W. COWLIN,
Notary Public.

(Endorsed:) Filed Feb. 23, 1909. H. S. Stoddard, Clerk.

231 And on to-wit: the twenty-third day of February, 1909, being one of the days of the regular December term of said court, 1908, in the record of proceedings thereof, in said entitled cause before the Hon. C. C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Order of February 23, 1909, Leave Given Receiver to Amend Petition Filed Herein on the 13th Instant.

29336.

CARRIE REBECCA FUREY, Executrix, etc.
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

On motion of the receiver, appearing by Mr. Levy Mayer, counsel for the Royal Trust Company, intervenor being present, leave is given to amend instanter the petition of the receiver filed herein on the 13th instant.

232 And on to-wit: the sixth day of March, 1909, come the receiver heretofore appointed in said cause and filed in the clerk's office of said court in said entitled cause his certain replication to the answer of the Royal Trust Company to the petition of receiver. Which said Replication is in the words and figures following to-wit:

Replication of Receiver to Answer of Royal Trust Co. to the Petition of Receiver.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division thereof, ss:

In the United States Circuit Court in and for the Northern District of Illinois, Eastern Division.

In Chancery. No. 29336.

CARRIE REBECCA FUREY et al.
vs.
AMERICAN GUARANTY COMPANY.

The replication of Edwin A. Potter, Receiver of the American Guaranty Company of Chicago, petitioner to the Answer of The Royal Trust Company to the said petition of Edwin A. Potter, Receiver of the American Guaranty Company.

This repliant, saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies

of the said answer of the said defendant for replication thereunto say, that he will aver, maintain and prove his petition to be true, certain and sufficient in the law, to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever, in the said answer
233 & 234 contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by his said petition he has already prayed.

MAYER, MEYER & AUSTRIAN,
Solicitors for Edwin A. Potter, Petitioner Receiver.

(Endorsed:) Filed March 6, 1909, H. S. Stoddard, Clerk.

235 And on to-wit: the sixth day of March, 1909, being one of the days of the regular December term of said Court, 1908, in the record of proceedings thereof, in said entitled cause before the Hon. C. C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Order of March 6, 1909, Ordering Royal Trust Company to Turn Over Property, etc., to Receiver.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in her own right and Caroline La Tour Furey,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO.

There now comes on to be heard the petition of Edwin A. Potter, Receiver herein, filed herein on February 13, 1909, against the Royal Trust Company of Chicago, praying for an order directing said Royal Trust Company to turn over to said Receiver all of the property, assets and funds held by said Royal Trust Company under an agreement dated April 10, 1899, as amended, made between said Royal Trust Company and said American Guaranty Company of Chicago, and also the answer of said Royal Trust Company this day filed herein to said petition, also the replication of said receiver this day filed herein to said answer, and there also comes on to be heard at the same time the petition of A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting the Contract-holders' Committee, this day by leave of court filed herein, to which, upon motion of solicitor for said receiver, the said petition of said receiver is hereby ordered to stand as an answer, and to which said petition

of said Contract-holders' Committee the said answer of said
236 Royal Trust Company, this day filed herein, is, upon motion of solicitor for said Royal Trust Company, hereby ordered to stand as an answer and there also comes on to be heard the intervening petition of said Royal Trust Comapny, filed herein on February 19, 1909, praying the aid and direction of this court in and about said agreement, as amended, and the reduction of said assets to cash, and the distribution thereof; and the court having heard the arguments of Levy Mayer, Esq., counsel for said Receiver, and of E. A. Bancroft, Esq., counsel for said Royal Trust Company, and of Sidney Gorham, Esq., counsel for said Contract-holders' Committee, and being fully advised in the premises.

It is hereby Ordered and Adjudged that said Royal Trust Company shall within ten days turn over to said Receiver all of the property, assets and funds held by said Royal Trust Company under the agreement, as amended, and when said Receiver has acquired possession of said property, assets and funds, he is hereby authorized and directed to hold and, in due course from time to time, collect and convert said property, assets and funds into cash; and he is hereby Further Ordered and directed to hold said property, assets and funds, and the proceeds thereof, as a separate and distinct fund and subject to such claims and trusts as this court may hereafter find were impressed upon said property, assets and funds, and the proceeds thereof, by said agreement, as amended, and by any contracts issued by said American Guaranty Company; and

It is hereby Further Ordered and Adjudged that any and all rights, claims and demands, whatever the same may be, of any and all contract-holders of said American Guaranty Company upon, in, to or against said property, assets and funds and the proceeds thereof, while the same were held by said Royal Trust Company, shall continue against said property, assets and funds and the proceeds thereof, while and during the time that they are held by or are in the possession of said Receiver.

237 It is hereby further ordered and directed that Haskins & Sells, accountants, who have heretofore examined the books of said American Guaranty Company containing the records of said Contracts and computed the reserves required according to the table of reserves adopted by said American Guaranty Company, may make a similar examination covering the period since February 29, 1908, up to and including February 1, 1909, and at like expense, as is specified in said agreement, as amended; and said accountants shall furnish a certificate of such examination in triplicate, one copy to be delivered to said Receiver, another to said Royal Trust Company and another to said Contract-holders' Committee.

It is hereby further ordered and directed that said Contract-holders' Committee shall, in due course and prior to any distribution of said property, assets and funds, and the proceeds thereof, file herein the numbers of the contracts represented by said Committee, the amount of the claims made thereunder, and the names and addresses of the holders of such contracts, who asserted or claimed, or

now assert or claim any preferential right or demand whatsoever in, to or against said property, assets and funds, and the proceeds thereof, by virtue of the provisions of their contracts and of said agreement of April 10, 1899 as amended.

It is hereby further ordered and directed that upon the delivery by said Royal Trust Company of said property, assets and funds to the receiver herein, all the duties and obligations of said Royal Trust Company arising or growing out of said agreement, as amended, or out of any of said contracts as to said property, assets and funds and the proceeds thereof, shall thereupon pass to
238 said receiver, and said Royal Trust Company shall thereupon be forthwith relieved of all further duties or obligations as to said property, assets and funds, and the proceeds thereof, or as to any of the beneficiaries thereof.

It is hereby further ordered and directed that said Royal Trust Company may retain out of said property, assets and funds so in its hands, the sum of two thousand dollars ($2000.) in full payment and satisfaction of all charges, compensation, costs, expenses, solicitors' and counsel fees incurred by said Royal Trust Company in the premises.

And on to-wit: the twenty-seventh day of October, 1909, come Edwin M. Keatley as Receiver of the American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, State of West Virginia, and filed in the clerk's office of said Court in said entitled cause his certain Intervening Petition, in words and figures following to-wit:

239 *Intervening Petition of Edwin M. Keatley.*

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. No. 29336.

CARRIE REBECCA FUREY et al., Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Petition of Edwin M. Keatley, of Charleston, West Virginia, for leave to intervene specially in said action, as receiver of said defendant corporation appointed by the Circuit Court of Kanawha County, West Virginia.

To the Honorable, the Judges of the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof:

Your petitioner, Edwin M. Keatley, respectfully represents to your Honors and alleges:

First. That your petitioner is, and for more than ten years last past, has been a citizen and resident of the State of West Virginia,

and that the above named complainants are, as petitioner is informed and believes, and for several years last past have been citizens and residents of the State of Illinois.

That the above named defendant, American Guaranty Company of Chicago, was prior to the first day of February, A. D. 1909, a corporation organized, created and existing under the laws of the State of West Virginia, with its principal office in the City of Charleston, Kanawha County, in the State of West Virginia, and its administrative offices in the City of Chicago, State of Illinois, and
240 was a citizen and resident of the said State of West Virginia.

Second. That on said first day of February, A. D. 1909, the above named complainants Carrie Rebecca Furey and Caroline La Tour Furey, appearing before the Circuit Court of Kanawha County, West Virginia, of which the county seat is said City of Charleston, by Hal. C. Bangs, of the City of Chicago, Illinois, and Brown, Jackson & Knight, of Charleston, West Virginia, as their attorneys, duly filed their bill in equity in said court, against the above named defendant American Guaranty Company of Chicago, representing themselves as the then holders and owners of more than two-thirds of all the outstanding capital stock of said defendant Company, and setting up that the balance of all of said stock was owned by Lewis W. Pitcher and James L. Bigelow, the Secretary and Treasurer respectively of said defendant, but was in fact then pledged to, and held by said defendant and had been so pledged and held by said defendant ever since March 28th, 1906, as collateral to loans made by it to the said owners respectively. That the authorized capital stock of said defendant was Five Hundred Thousand ($500,000.) Dollars, but that only Ninety-Six Thousand Two Hundred ($96,200.) Dollars had ever been issued, of which said complainants as heirs and devisees of one Charles La Tour Furey, who had for some four years previous to November 29th, 1908, been Vice-President of and had wholly dominated and carried on the affairs of said defendant, held six hundred two (602) shares, said Pitcher two hundred sixty (260) shares, and said Bigelow one hundred (100) shares.

Said complainants further therein alleged that said Charles La Tour Furey became Vice-President of said defendant in 1899, and from about July, A. D. 1903, by resolution of the Board of Directors, none of whom except the three persons above named, owned or held any of said stock, was directed and empowered to and did assume control of the entire business of said defendant, and, said Furey, they alleged, conducted the same with such signal
241 ability and success that the business grew to extraordinary proportions, so that by December, 1908, it had outstanding and in force, valid contracts to the amount of over Fifteen Million ($15,000,000.) Dollars face value. That said defendant company had over Five Hundred Fifty Thousand ($550,000.) Dollars cash and securities deposited with a trust company, to protect the cash surrender value of said contracts, and in addition thereto, cash and other actual assets exceeding Seven Hundred Fifty Thousand

($750,000.) Dollars in value, and that the entire business of said company had been built up by said Charles La Tour Furey, its Vice-President, since whose decease no one could be found of equal expert knowledge and ability to continue said business, and that the corporation should in the best interests of the stockholders and contract holders be dissolved and its business and affairs wound up, and its assets liquidated and distributed in accordance with the rights of those entitled thereto.

That outside of its obligations upon its outstanding contracts and its nominal rent and commission expenses to said Furey and its agents, the said Guaranty Company had no liabilities whatsoever, and none at all in the State of West Virginia, except such as might arise upon forty-eight (48) unmatured contracts held by citizens of said state. That all the property and effects of said guaranty Company were situated in the City of Chicago, Illinois, and prayed on behalf of all stockholders that the corporation be dissolved and one or more receivers appointed to take charge of and administer the assets of said company.

Such bill was duly verified by both complainants in the City of Chicago, Illinois, all of which more fully and at large appears by a true copy of said bill, which is hereto annexed, marked "Exhibit A," and which your petitioner prays may be taken and considered a part hereof.

242 That at the same moment in which said bill was so presented, the said other stockholders, Pitcher and Bigelow, appeared in said court by the same Hal. C. Bangs, their attorney, and filed their written joinder in said bill and united in the prayer thereof for such dissolution of said defendant corporation.

That said defendant company likewise therein appeared by Angus W. McDonald, its attorney, filed written consent or answer to said bill, signed by Frederick M. Steele, President, and attested by L. W. Pitcher, Secretary.

And thereupon, said Circuit Court of said Kanawha County, without requiring or taking proof in said matter, but relying wholly upon the representations and statements of said attorneys, as said court had a perfect right to do, in conformity of the tenor and effect of all of said documents, immediately and upon the same day signed and entered a judgment and decree by said attorneys prepared beforehand, dissolving the said defendant corporation, and appointing V. L. Black, Esq., an attorney and counselor of said court, and a member of the firm of Brown, Jackson & Knight, appearing in said action on behalf of said complainants in said cause, as the receiver of said corporation, defendant, with all the usual powers and authority of receivers, charged with the conservation and collection of all the assets of said corporation, and the proper administration and distribution thereof, and accepted and approved the prepared bond of said receiver then presented, in the penal sum of Five Thousand ($5000.) Dollars, and said receiver duly and fully qualified at once as such. That although said bill for dissolution was duly verified and set up that as aforesaid said defendant company had a large and pros-

perous business and had quick assets and property in cash in a very large amount at Chicago, Illinois, and that it owed no debts whatsoever, except possibly and contingently to its own contract holders and for current expenses and commissions, and further
243 alleged that it had no property or assets whatever within the said state of West Virginia, and had only forty-eight (48) contract holders residing in said state, still, notwithstanding that it thus appeared upon the face of said bill that said receiver could not possibly handle any of the assets, nor control any of the funds of said defendant, in said state, said order appointing such receiver, expressly limited his authority and power to the assets of said defendant corporation within the said state of West Virginia, and, as your petitioner believes, designedly and in fraud, and in contempt of the Circuit Court of Kanawha County, West Virginia.

That true copies of all of said documents above referred to in said suit in said Circuit Court of Kanawha County, are hereto annexed, and your petitioner begs leave to refer to the same respectively for greater certainty.

Your petitioner further shows that upon the next day following, said proceedings above referred to, by which said defendant was so duly dissolved and said receiver therefor duly appointed by said Circuit Court of Kanawha County, West Virginia, being a court of competent jurisdiction within the state of the incorporation of said defendant, towit, upon the 2nd day of February A. D. 1909, the above named complainants appearing in this court by their attorneys Steele, Williams & Steele, instituted this action.

That said defendant company, though dissolved by the decree of the Circuit Court of Kanawha County, West Virginia, on said 1st day of February, 1909, and a receiver thereof duly appointed, then and there pretended to appear and file a consent answer purporting to be signed American Guaranty Company of Chicago by Frederick M. Steele, President, and attested by L. W. Pitcher, Secretary, by Gorham & Wales, its solicitors.

That your petitioner prays leave to refer to the several pleadings and to all the records, papers and proceedings thereof in
244 this Honorable Court for greater particularity.

That afterwards and on the 22nd day of September, A. D. 1909 one W. R. Gilliam for himself and a number of other holders of contracts issued by said defendant company, appearing by their attorneys, with permission of the court first asked and obtained, duly intervened by petition in said action so as aforesaid instituted and then pending in said Circuit Court of Kanawha County, West Virginia, and asked for the discharge of said receiver heretofore appointed by said Court, and for the appointment in said action of a new receiver empowered to collect, receive and administer under the laws of West Virginia all the property and assets of said American Guaranty Company of Chicago, wherever situated. That said intervening petition came on to be heard before said Circuit Court, and the same counsel appeared therein in behalf of said defendant company as appeared on the said 1st day of February, 1909, when

said decree of dissolution was granted, and one Hal. C. Bangs, a member of the firm of Mayer, Meyer & Austrian, attorneys for the receiver of said defendant company, appointed by this Honorable Court, was present and participated therein, and such proceedings were duly had in said Court, that on the 22nd day of September, A. D. 1909, the said Circuit Court for Kanawha County, West Virginia, made and entered its order, revoking the former appointment of receiver and constituting and appointing your petitioner receiver of all the property and assets of said American Guaranty Company, of Chicago, wherever the same might be found, with full power and authority to proceed to reduce the same to possession, and to do all things necessary or convenient to that end, and enjoined all persons against interference with your petitioner in the performance of his duty thereunder, and directed the officers of said defendant to take all necessary steps to vest title and possession of its assets as aforesaid, in your petitioner as such receiver.

245 That your petitioner has duly qualified and given bond, which has been duly accepted and approved as required by said Court, and is now the duly qualified and acting receiver of said American Guaranty Company of Chicago as above set out.

That the order of said Circuit Court of Kanawha County, West Virginia, entered in said cause on the 22nd day of September, 1909, provided among other things, that the said American Guaranty Company of Chicago, should, within fifteen days from said 22nd day of September, 1909, make, execute and file with the papers in said cause an apt and proper deed conveying all of the property and assets of said American Guaranty Company of Chicago, to your petitioner as receiver, as aforesaid, and upon the failure of said American Guaranty Company of Chicago so to do, that then T. S. Clark, who was then and there appointed a Special Commissioner for that purpose, should make and execute for and on behalf of the said American Guaranty Company of Chicago, such deed conveying and assigning all of the property and assets of the said American Guaranty Company of Chicago, to said receiver.

Your petitioner further alleges that the said American Guaranty Company of Chicago did not make and execute the said deed within the said fifteen days, and thereupon, the said T. S. Clark, as such Special Commissioner, presented to the said Circuit Court of Kanawha County, West Virginia, a deed so conveying all of said property and assets, which said deed was by said court approved by order entered in said cause on the 13th day of October, 1909; and thereupon said deed conveying all of the said property and assets of said American Guaranty Company of Chicago, was delivered to your petitioner, a copy of which said deed is herewith filed as a part of this petition.

246 Your petitioner further alleges that the said Circuit Court of Kanawha County at the time of directing the said deed to be made to your petitioner, and at the time of approving the same, and at the time the same was made, executed and delivered to your petitioner, had jurisdiction of all of the stockholders of said corpo-

ration and of the said defendant corporation in the said suit which had been instituted prior to the dissolution of said corporation, and had the legal right to order and direct the said deed to be made, and, therefore, since the appointment of your petitioner as such receiver, your petitioner has had and now has the right to the custody, control and possession of all of the property and assets of the said American Guaranty Company of Chicago, and since the making of said deed your petitioner not only has the title and right of a receiver under Sections 58 and 59 of Chapter 53 of the Code of West Virginia, but also has the right and title of an assignee and grantee under the said deed.

That true copies of said intervening petition and of the order of appointment of petitioner as such receiver, and all the records and proceedings pertaining thereto in such Circuit Court of Kanawha County, West Virginia, are hereunto annexed and made part hereof, the same as though set forth herein at length, to which petitioner prays leave to refer for greater certainty.

Third. And your petitioner further shows that he is advised by counsel and therefore alleges, that the judgment and decree of said Circuit Court for Kanawha County, West Virginia, dissolving and declaring at an end the incorporation of said American Guaranty Company of Chicago as a corporation under the laws of said state, so as aforesaid made and entered on said 1st day of February, A. D. 1909, was fully authorized by the provisions of sections 57 and 58 of Chapter 53 of the Code of West Virginia, and forever ended and determined the corporate existence of said defend-
247 ant company and deprived it absolutely and entirely of any power or authority to act in any manner whatsoever as a corporation thereafter, and forever ended the authority of its officers to act for or in its behalf, except as expressly provided by section 59 of Chapter 53 of the Code of said State of West Virginia, whereby, under the circumstances therein set out, officers of such corporation are permitted to act for a limited time so far only as may be necessary in winding up the affairs of the corporation, and that, as in the said case in said Kanawha Circuit Court, where a receiver of the said dissolved corporation is appointed for the purpose of winding up the corporate business and affairs, the officers of said corporation are absolutely deprived of all authority to act, except as directed by the said court, or requested by the said receiver. And said section 59 further provides that the property and assets of the corporation shall, under the order and direction of the receiver appointed by such Circuit Court for the purpose, as is mentioned in the 57th section of said chapter 53 of the Code of West Virginia, be subjected to the payment of the liabilities of the corporation and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests.

That, therefore, the said dissolution of said American Guaranty Company of Chicago, by said decree of said Circuit Court of Kanawha County, West Virginia, so made and entered on the 1st day of

February, 1909, and the appointment of said Black as such receiver, in and of itself, without the restraining order, also then and there issued, took from said corporation and its Board of Directors, and all its officers, every power, franchise, right and authority to appear for said corporation in this Honorable Court and submit to the jurisdiction thereof in this pending action, or to give to this Honorable Court jurisdiction herein, either over the person of said
248 defendant company or the subject matter of winding up its affairs by and through its own receiver appointed in this cause upon said 2nd day of February, A. D. 1909.

That the said defendant corporation upon dissolution as hereinbefore mentioned, under the laws of West Virginia, the state of the creation of said defendant, could only finish its business, conserve and marshal its assets, pay and discharge its lawful indebtedness, and distribute and dispose of its surplus funds, if any, by and through the direction, orders, judgments and decrees of said Circuit Court of Kanawha County, West Virginia, and that any attempt so to do, or any interference with the property, business or assets of said defendant corporation, by any other court wherever situate, except ancillary to and upon the request and authority of said court of original jurisdiction, would be wholly unwarranted and without competent jurisdiction, and all the acts, orders, directions, judgments and decrees of such other court, and all its proceedings, would in that respect be *coram non judice* and without right.

And your petitioner further shows, that he is advised by counsel and therefore alleges, that the pretended voluntary appearance in this Honorable Court and in this cause by said defendant American Guaranty Company of Chicago on said second day of February, A. D. 1909, by and through its attorneys Gorham & Wales, and its voluntary answer to said bill, and its consent to the appointment of receiver herein, when said corporation had been by the same parties, or in the same interests procured to be declared dissolved, and a receiver therefor so appointed in said state of West Virginia on said 1st day of February, A. D. 1909, gave to this Honorable Court no jurisdiction whatever, but was in fact a fraud upon this Honorable Court, and all proceedings subsequently taken herein are without right, and in truth and in law and fact, null and void.

249 That by virtue of the order so made by said Circuit Court of Kanawha County, West Virginia, appointing your petitioner receiver of said Court for the property and assets of said defendant American Guaranty Company of Chicago, it becomes the duty of your petitioner to ask permission of this Honorable Court to intervene specially in this action, not acknowledging, but on the contrary, protesting the jurisdiction of this Honorable Court in the premises, and to ask that this Honorable Court permit to be filed herein, this petition for the purpose aforesaid, to the end that, after proper answer the issues framed may be heard in this Honorable Court and finally determined, and that the order and decree

of this Honorable Court be made and entered, as the rules of equity shall require.

And your petitioner will ever pray, etc.

EDWIN M. KEATLEY,
Petitioner.

By F. W. HOUGHTON,
His Attorney.

THOS. H. GILL,
F. W. HOUGHTON,
GEO. B. EDGERTON,
CHILTON, MacCORKLE & CHILTON, *Sol's.*

P. O. Address of the above named Sols. as follows:

Thos. H. Gill, F. W. Houghton, Germania Bldg. Milwaukee, Wis.

Geo. B. Edgerton, Nat'l German American Bank Bldg., St. Paul, Minn.

Chilton, MacCorkle & Chilton, Charleston, W. Va.

250 STATE OF WEST VIRGINIA,
Kanawha County, ss:

This day personally appeared before the undersigned authority, Edwin M. Keatley, who being sworn upon his oath says, that he is the petitioner named in the foregoing petition, and has read the same and knows the contents thereof; that the allegations contained therein are true, except so far as they are therein stated upon information and belief, and in so far as they are therein stated to be upon information and belief, he believes the same to be true.

EDWIN M. KEATLEY.

Taken, subscribed and sworn to before me this 16 day of October, A. D. 1909.

[Seal J. M. Derrick, Notary Public, Kanawha County, W. Va.]

JOHN M. DERRICK,
Notary Public, Kanawha County, West Virginia.

My commission expires Dec. 31st, 1909.

STATE OF WEST VIRGINIA,
County of Kanawha, ss:

I, L. C. Massey, Clerk of the County Court of Kanawha County, in the State of West Virginia, do hereby certify, that John M. Derrick whose name is signed to the foregoing Certificate, is now, and was at the time of signing the same, a Notary Public in and for said County and State, duly appointed and qualified, that to all his official acts full faith and credit are due and that his signature is genuine.

In testimony whereof, I have hereunto set my hand and affixed

my official seal, this 16 day of Oct. 1909, and in the 47 year of the State.

[Seal County Court, Kanawha County, West Virginia.]

L. C. MASSEY,
Clerk Kanawha County Court.

251 This Deed, made this Ninth day of October, A. D., 1909, between the American Guaranty Company of Chicago, a corporation created under the laws of the State of West Virginia, by T. S. Clark, Special Commissioner of the Circuit Court of Kanawha County, West Virginia, duly authorized so to do as hereinafter set forth, party of the first part, and Edwin M. Keatley, Receiver of the said American Guaranty Company of Chicago, party of the second part; the said Clark and Keatley both being citizens and residents of the State of West Virginia, and now being in the County of Kanawha in said state:

Witnesseth:

Whereas, on the 1st day of February, 1909, Carrie Rebecca Furey and Caroline La Tour Furey filed their certain bill in equity in the Circuit Court of Kanawha County, West Virginia, against the said American Guaranty Company of Chicago, praying for the appointment of a receiver for said corporation and that said corporation be dissolved, in which said suit Lewis W. Pitcher and James L. Bigelow joined as complainants, and appeared and consented that the prayer of the bill be granted, and on the same day the said defendant, American Guaranty Company of Chicago, appeared and admitted the allegations of the said bill; and,

Whereas, by decrees and orders entered in said cause on said first day of February, 1909, and on the 22nd day of September, 1909, the said corporation was by said court dissolved and a receiver for said corporation was appointed; and

Whereas, by said decree of September, 22nd, 1909, the said Edwin M. Keatley was appointed a receiver of the said American Guaranty Company of Chicago to take custody, possession and control of all and singular the property and assets of the said American Guaranty Company of Chicago wherever the same may be situated or located, whether in the State of West Virginia, or in some other state or territory, and hold the same subject to the provisions of the statutes of West Virginia, under the orders of said Court,

252 and to the payment of the liabilities of the said corporation and the expenses of winding up its affairs, and the surplus, if any, to distribute among the stockholders of the said American Guaranty Company of Chicago, according to their respective interests as the Court may hereafter direct; and,

Whereas, it was also provided in said decree of September 22nd, 1909, that "The defendant, American Guaranty Company of Chicago, under the provisions of Section 59 of Chapter 53 of the Code of West Virginia, is hereby ordered and directed to make, execute and deliver an apt and proper deed, conveyance, transfer or assignment conveying to the said Receiver this day appointed, all of the property and assets of said American Guaranty Company of Chi-

cago, wherever the same may be situate": and by the said decree it was further provided that "In the event that the American Guaranty Company of Chicago shall fail to file with the papers in this cause, within fifteen (15) days from this date, an apt and proper deed, conveyance, transfer or assignment, conveying to the Receiver this day appointed, all of the property and assets of said American Guaranty Company of Chicago, wherever the same may be situated, then that T. S. Clark, who is hereby appointed a special commissioner for that purpose, shall make, execute, acknowledge and deliver for record for and on behalf of the said American Guaranty Company of Chicago, an apt and proper deed, conveyance, transfer or assignment, conveying to the said Receiver this day appointed, all of the property and assets of the said American Guaranty Company, wherever the same may be situated"; and,

Whereas, more than fifteen (15) days have elapsed since the entering of said decree, and the said American Guaranty Company of Chicago having failed to file or cause to be filed a deed, conveyance, transfer or assignment conveying all of the property and assets of the said Company to the said Edwin M. Keatley, Receiver;

253 Now therefore, the said party of the first part in consideration of the premises, and in further consideration of One Dollar ($1.00) in hand paid, the receipt of which is hereby acknowledged, does hereby grant, convey, transfer and assign unto the said party of the second part, all and singular the property and assets of the American Guaranty Company of Chicago, wherever the same may be situated, to have and to hold the same subject to the provisions of Section 59 of Chapter 53, of the Code of West Virginia, and to all of the terms and conditions of the said decree of the Circuit Court of Kanawha County, West Virginia, rendered on the 22nd day of September, 1909.

Witness the following signature and seal.

AMERICAN GUARANTY COMPANY
OF CHICAGO.
By T. S. CLARK, [SEAL.]
Special Commissioner Appointed by the Circuit Court of Kanawha County, West Virginia.

STATE OF WEST VIRGINIA,
County of Kanawha, To-wit:

I, Adam B. Littlepage, a Notary Public in and for the County and State aforesaid, do certiy that T. S. Clark, Special Commissioner appointed by the Circuit Court of Kanawha County, West Virginia, by a decree entered therein on the 22nd day of September, 1909, in the chancery cause of Carrie Rebecca Furey and Others, against the American Guaranty Company of Chicago and Others, whose name as such is signed to the writing above, bearing date the Ninth day of October, 1909, has this day acknowledged the same before me in my said County for and on behalf of himself and for
254 and on behalf of the said American Guaranty Company of Chicago.

Given under my hand and official seal this 13th day of October, 1909.

[SEAL.] ADAM B. LITTLEPAGE,
Notary Public of Kanawha County, in the State of West Virginia.

My commission expires on the 31st day of December, 1909.

WEST VA., KANAWHA COUNTY COURT CLERK'S OFFICE.
Oct. 14th, 1909.

This Deed was this day presented to me in my office, and thereupon, together with the Certificate thereto annexed, is admitted to record.

Teste:

L. C. MASSEY,
Clerk Kanawha County Court.

A true copy from the record this 16th day of October, A. D. 1909.

Teste:

[OFFICIAL SEAL.] L. C. MASSEY,
Clerk Kanawha County Court.

255 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

At a Circuit Court for Kanawha County, Held at the Court House Thereof on the 1st Day of February, 1909.

In Chancery. No. 2019½.

CARRIE REBECCA FUREY, Individually and as Executrix, etc., and CAROLINE LA TOUR FUREY,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Now comes on to be heard the application of the Complainants in the above entitled cause, for a decree of dissolution of the American Guaranty Company, a corporation organized and existing under the laws of the State of West Virginia, and for the appointment of a receiver of said American Guaranty Company, and the Court having seen and inspected the Bill of Complaint herein, and the joinder therein as Plaintiffs, by Lewis L. Pitcher and Jas. L. Bigelow, which bill and joinder are here ordered to be filed, and it appearing that the complainants represent more than one-third in interest of the stockholders of the American Guaranty Company, and that all the stockholders have notice hereof and consent to the entry of this decree by writing here filed, and that the American Guaranty Company has entered its appearance herein and has due notice hereof, the court finds that the prayer of the bill of
256 complaint herein should be granted, and,

It is hereby ordered, adjudged and decreed that the said

American Guaranty Company of Chicago be, and it hereby is, dissolved, and V. L. Black of Charleston, W. Va., is hereby appointed receiver of all and singular the property and assets of the American Guaranty Company, of every description within the jurisdiction of this court, to have and to hold and to administer the same under the orders and direction of this court. All the creditors of said American Guaranty Company are hereby enjoined from interfering or meddling with any of the property of said American Guaranty Company. The receiver is hereby directed to take all and such steps as may be necessary to secure possession of the property of the American Guaranty Company within the jurisdiction of this court and to apply to this court for any and such further directions as to him may seem necessary, but before entering upon the discharge of his duties in this behalf said Receiver shall give bond with approved security before the Clerk of this Court in the penalty of $5,000.00, conditioned according to law.

257 "EXHIBIT "A."

The Bill of Complaint referred to in the foregoing order is in the words and figures following, to-wit:

STATE OF WEST VIRGINIA,
Kanawha County, ss:

In the Circuit Court of Kanawha County.

To the Honorable the Judges of the Circuit Court in and for Said County:

Humbly complaining, your oratrix, Carrie Rebecca Furey, as executrix of the last will and testament of Charles La Tour Furey, deceased, and in her own right, and your oratrix, Caroline La Tour Furey, in her own right and by G. S. Couch, Jr., her next friend, and on behalf of themselves and all other stockholders, as complainants herein, show unto the court the following:

1. That said Charles La Tour Furey departed this life on or about November 29th, 1908, in the City of Chicago, County of Cook and State of Illinois; that he left a last will and testament which was duly admitted to Probate in the Probate Court of said Cook County, on December 8, 1908, which court then had and still has full and competent jurisdiction to admit said will to probate and to administer upon the estate of said Charles La Tour Furey, deceased; that letters testamentary duly issued out of said Probate Court to your oratrix, said Carrie Rebecca Furey as such executrix of said last will and testament and of said estate of said Charles La Tour Furey, deceased, on said December 8, 1908, upon which date your oratrix, Carrie Rebecca Furey, duly qualified as such executrix, and since said date has continued to and still is acting as such executrix under the jurisdiction and control of said Probate Court; that said letters

testamentary are still in full force and effect, unrevoked and
258 unappealed from; that in and by said last will and testament one James L. Bigelow was also named as an executor thereof, but that prior to said December 8, 1908, said James L. Bigelow in writing filed in said Probate Court, duly renounced his said appointment and refused to act as such executor, and in consequence and by reason thereof said Probate Court duly appointed, as aforesaid, Carrie Rebecca Furey as sole executrix of said last will and testament and of said estate of said Charles La Tour Furey, deceased; that a true and correct copy of said last will and testament and of said letters testamentary, so as aforesaid issued to said Carrie Rebecca Furey, as said executrix, is hereto attached as Exhibit "A" and by express reference thereto made part hereof.

2. That in and by said last will and testament said Charles La Tour Furey, deceased, devised to your oratrix, said Carrie Rebecca Furey (his widow), and to his daughter, your oratrix said Caroline La Tour Furey, all of the real estate and personal property of every description of said Charles La Tour Furey, to have and to hold the same, share and share alike, absolutely in their own right; that on February 27, 1902, the date of said last will and testament, said Caroline La Tour Furey was a minor, of the age of twelve years; that at the time of said death of said testator she was nineteen years of age; that the age of majority of female minors in the State of Illinois was at the time of said death of said Charles La Tour Furey and now is, eighteen years; that both of your oratrices long before and at the time of said death were and continuously since have been and now are citizens of Illinois and residents of Chicago, in said State.

259 3. That at the time of his death said Charles La Tour Furey was the absolute owner of 602 shares of the capital stock of the par value of $100 each, of the American Guaranty Company of Chicago, the defendant hereinafter named, and that the absolute title to said 602 shares is now in your oratrix, said Carrie Rebecca Furey, as executrix as aforesaid, solely for the benefit of herself and her said daughter, Caroline La Tour Furey; that your oratrix, Carrie Rebecca Furey, as executrix as aforesaid, now has in her possession all of the stock certificates representing said 602 shares of capital stock, which stock certificates were duly issued by said American Guaranty Company of Chicago to said Charles La Tour Furey, long prior to his decease.

4. That said American Guaranty Company of Chicago was duly incorporated under the laws of West Virginia, and that a certificate of such incorporation duly issued by the Secretary of State of West Virginia, under the seal of said State, on July 18, 1892; that said Company was originally incorporated, as aforesaid, under the name of The American Investment Guaranty Company, with an authorized capital stock of $200,000, and authority to increase the same to $1,000,000, that thereafter, on or about January 12, 1898, the name of said Company was duly changed from that of The American Investment Company to the American Guaranty Company of Chicago; that on April 13, 1901, the authorized capital

of said American Guaranty Company of Chicago was duly reduced from 10,000 shares of the par value of $100. each, to 5,000 shares, of the par value of $100. each, and that since April 13, 1901, the authorized capital stock of said company has been $500,000; that said American Guaranty Company was duly incorporated
260 for a period expiring July 1, 1942, and among the objects for which said company was and is incorporated, under the certificate of incorporation and the amendments thereto, was and is to enter into contracts with individuals, firms and corporations, known as "investment", "service" and "income" contracts, hereinafter more particularly referred to; that a true and correct copy of said certificate of incorporation and of all amendments thereto, is hereto attached as Exhibit "B" and by express reference thereto made part hereof.

5. That the principal office of said Guaranty Company ever since its incorporation always has been and is in the city of Charleston, in said Kanawha County, in the state of West Virginia, that its administrative offices have been and now are in the City of Chicago, and State of Illinois; that beginning, to-wit: on July 18, 1892, and continuously since up to December 15, 1908, said Guaranty Company has carried on its said business of issuing and dealing in investment, service and income contracts, and on said December 15, 1908, said Guaranty Company had and now has outstanding, in full force and effect, contracts of a total nominal value or possible contingent amount aggregating $15,825,000, divided into $3,254,000, of investment and service contracts, and $12,571,000 income contracts; that the amount of said respective contracts varies from a minimum of $1,000 to a maximum of $10,000, upon the dates of their maturity; that said contracts mature at periods of ten, fifteen and twenty years from the respective dates of their issue; that the total cash or surrender value of all said contracts is many millions of dollars less than said nominal value thereof and is estimated by your oratrices to be, to-wit: $1,000,000; that there are about 6500 of said contracts now outstanding, which are scattered throughout the United States, Canada and Mexico; that all of said contracts provide by their terms that the holders thereof shall pay to the said Guaranty Company specified amounts in peri-
261 odical installments payable monthly, quarterly, semi-annually or annually, and further provide that default in making of any of said periodical payments during the first two years of the life of said contracts shall result in a forfeiture thereof, and that after the lapse of said two years said contracts shall become non-forfeitable, but that defaults made subsequent to said two years shall result in either an exchange of the contract for one that is paid up, or surrendered for a specified cash surrender value; that there are attached hereto specimen copies of said investment, service and income contracts as Exhibits "C," "D," and "E" and which by express reference thereto are made part hereof.

6. That said investment and service contracts provide by their terms that as security for the redemption of the same, said Guaranty Company shall have and keep in trust, moneys and other securities

to such an amount as shall at the time equal in the aggregate seventy-five per cent. of the cash value of said contracts, as shown by the schedules appended thereto, and that said income contracts, issued prior to 1906, contain similar terms, and those issued in 1906 and since provide that the moneys and other securities so to be kept in trust shall be in amount equal to the cash loan value specified in said income contracts, less the amount of any unpaid loans thereon; that pursuant to the provisions so contained in said contracts, said Guaranty Company did deposit and now has on deposit a fund consisting of cash and other securities aggregating, to-wit: over $550,000; that in addition to said fund said Guaranty Company now has assets consisting of cash, securities, bills receivable, loans to contract holders and other assets, all estimated to be worth, to-wit: over $750,000.

7. That though the total authorized capital stock of said Guaranty Company is now $500,000, there was at the time of the death of said Charles La Tour Furey and there now is issued and outstanding, only 962 shares of said stock, of the par value of $100 each;
that of said 962 shares 602 shares so as aforesaid belong to
262 and are the property of the said estate of said Charles La Tour Furey, deceased, as hereinbefore stated; that the remaining 360 shares belong, 260 thereof to Lewis W. Pitcher and the other 100 shares to James L. Bigelow; that said Pitcher and Bigelow now and for many years continuously last past have been, respectively, Secretary and Treasurer of said Guaranty Company; that the said 260 shares belonging to said Pitcher are now, and since March 28, 1906 have continuously been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Pitcher to said Guaranty Company, contracted prior to the date last aforesaid; that the said 100 shares belonging to said Bigelow now are and continuously since March 24, 1905 have been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Bigelow to said Guaranty Company, contracted prior to the date last aforesaid; that — the time of the death of said Charles La Tour Furey, the total outstanding stock of said Guaranty Company was owned by said Charles La Tour Furey and said Pitcher and Bigelow, respectively in the amounts hereinbefore stated; that from a time prior to July 1, 1908 continuously up to and including the present time, the stockholders of said company were said Charles La Tour Furey (and after his death his said estate) and said Pitcher and said Bigelow and none other; that from a time prior to July 1, 1908, continuously up to and including the present time, there were and are only three stockholders of said Company.

8. That on or about January 11, 1899, said Charles La Tour Furey first became connected with said Guaranty Company, and on or about said date was elected vice-president thereof and continuously thereafter, up to the time of his death, continued to be such vice-president; — with the approval and concurrence of the Board
of Directors of said Guaranty Company, he assumed the active
263 management and control of the business of said Guaranty Company and continued in such management and control

continuously until the time of his death: that on June 23, 1903, at a meeting of the Board of Directors of said Guaranty Company, the following resolution was duly and unanimously adopted:

"Resolved, the Vice-president, by virtue of his office is hereby constituted chairman of the Board of Directors, and is to assume and perform all the duties of the president, it being also understood that the vice-president shall take upon himself the duty of generally supervising all details and operation of the business."

That pursuant to said resolution and in compliance therewith, said Charles La Tour Furey, as such Vice-president, did continuously since June 23, 1903, until the time of his death, act as Chairman of the Board of Directors of said Guaranty Company and assumed and performed all the duties of the President thereof, and took upon himself the duty of generally supervising all details and the operation of the business of said Guaranty Company; that said Charles La Tour Furey possessed expert knowledge and ability in the kind of business in which said Guaranty Company was engaged, as aforesaid, and by reason of his said knowledge and ability said Charles La Tour Furey was put and continued in the practical control and management of the business of said Company, and was in such control and management at the time of his death; that when he first became Vice-president of said company as aforesaid, its total outstanding contracts were of about $3,000,000, nominal value, while at the time of his death the nominal value of the outstanding contracts, aggregated, as aforesaid, about $15,825,000; that such increase was due to said expert knowledge and ability of said decedent; that since November 29, 1908, the date of the death of said Charles La Tour Furey, and up to December 15, 1908, your
264 oratrix, Carrie Rebecca Furey, executrix as aforesaid, observed the workings of the business of said company and found that unless some successor of equal expert knowledge and ability to that possessed by said decedent could be found to take his place said business could not be advantageously or successfully conducted; that she made careful investigation and endeavored, but unsuccessfully, to find a successor to said decedent in said Company, and therefore on December 15, 1908, concluded and advised that said Company should temporarily at least, abstain from issuing new contracts and accordingly, since said date, said company has issued no new contracts; that your oratrix, said Carrie Rebecca Furey, never had any business experience of any kind, and said Caroline La Tour Furey was at the time of her father's death attending school, and that neither of your oratrices has the experience, ability or qualification to conduct said business nor is willing to carry on and conduct the same or to further continue the interest of said estate as a stockholder in said company; that in view of the premises your oratrices and said Pitcher and Bigelow, together owning all of the issued stock of said Guaranty Company, have concluded that it is to the best interests of said Company, its stockholders and all of its contract holders, that said Company shall be dissolved and its business and affairs wound up and its assets

liquidated and distributed in accordance with the rights of those entitled thereto; that other than its obligations on said contracts, said Guaranty Company has no liabilities whatever except to a nominal amount for current expenses, and except what may be owing for commissions to said Charles La Tour Furey and agents; that said Guaranty Company has no liabilities of any kind in the State of West Virginia other than to forty-eight contract holders, none of whose contracts has matured and upon none of which is said Guaranty Company in any way in default and the total surrender or cash value of which does not exceed $9,751.44; that all of the prop-
265 erty and effects of said Guaranty Company are in said City of Chicago, except a few cash balances in little more than nominal amounts due to said Guaranty Company from about fifteen banks outside of Chicago, which have been the collecting agents of said Guaranty Company.

9. That your oratrices, constituting and being more than one-third in interest of the stockholders of said Guaranty Company, desire to wind up its affairs, and with said Pitcher and Bigelow, who also desire to wind up its affairs, constitute the entire interest of the stockholders of said Company.

Wherefore, the premises considered, your oratrices make said American Guaranty Company of Chicago a party defendant hereto and pray that process, in due form, returnable as provided by law, may issue against it; that it may be required to make answer hereunto but not under oath, answer under oath being hereby expressly waived; that this court decree a dissolution of said American Guaranty Company of Chicago, and make such orders and decrees, and award such injunctions in the cause as justice and equity may require; and appoint one or more persons to be receivers to take charge of and administer the assets of said defendant company, and grant such other and appropriate relief as may be proper in the premises.

And your oratrices will ever pray, etc.

CARRIE REBECCA FUREY,
Ex'trx Furey Estate.
CARRIE REBECCA FUREY.
CAROLINE LA TOUR FUREY.

266 STATE OF ILLINOIS,
County of Cook, ss:

Carrie Rebecca Furey and Caroline La Tour Furey, each being severally sworn, each upon oath deposes and says that she has heard read the above and foregoing bill of complaint, by them subscribed, and that said bill is true in every respect to the best of the knowledge, information and belief of each of these deponents.

CARRIE REBECCA FUREY.
CAROLINE LA TOUR FUREY.

Subscribed and sworn to before me, a Notary Public, by said Carrie

Rebecca Furey and said Caroline La Tour Furey, this 30th day of January, A. D. 1908.

[Seal Mary Cody, Notary Public, Cook County.]

MARY CODY,
Notary Public.

HAL C. BANGS,
BROWN, JACKSON & KNIGHT,
Solicitors for Complainants.

267 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

In the Circuit Court of Kanawha County.

CARRIE REBECCA FUREY, Individually and as Executrix, etc., and CAROLINE LA TOUR FUREY, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

The American Guaranty Company of Chicago, defendant in the above entitled cause, hereby enters its appearance herein and consents to the granting of the prayer contained in said bill of complaint and to the entry of a decree of dissolution of said American Guaranty Company of Chicago, and to the appointment of a receiver to take charge of and administer its assets, and to the entry of such other orders and decrees and to the awarding of such injunctions in the cause as equity and justice may require.

[American Guaranty Company of Chicago.]

AMERICAN GUARANTY COMPANY OF CHICAGO,
By FREDERICK M. STEELE, *President.*
ANGUS W. McDONALD,
Sol. for American Guaranty Company.

Attest:
[SEAL.] L. W. PITCHER, *Secretary.*

268 STATE OF WEST VIRGINIA,
County of Kanawha:

In the Circuit Court of Kanawha County.

CARRIE REBECCA FUREY, Individually and as Executrix, and CAROLINE LA TOUR FUREY, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Lewis W. Pitcher and James L. Bigelow join as complainants in the above and foregoing bill of complaint, and request that the prayer thereof be granted.

LEWIS W. PITCHER,
JAMES L. BIGELOW,
By HAL C. BANGS,
Their Attorney.

269 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

In the Circuit Court of Kanawha County.

CARRIE REBECCA FUREY, Individually and as Executrix, etc., and CAROLINE LA TOUR FUREY, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Lewis W. Pitcher and James L. Bigelow, being the same persons named in the above and foregoing bill of complaint hereby state that they have heard read the bill and know its allegations and prayer; that the said allegations are true and that the prayer thereof ought to be granted, and they consent to the granting of the same; that the granting of said prayer is to the best interests of said American Guaranty Company of Chicago and all of its stockholders and creditors, and they respectively request that the said court shall grant a decree of dissolution of said American Guaranty Company of Chicago and appoint a receiver to take charge of and administer its assets, and make such other orders and decrees and award such injunctions in the cause as equity and justice may require.

LEWIS W. PITCHER.
JAMES L. BIGELOW.

270 (Exhibit "A" referred to in the foregoing bill is in the words and figures as follows, to-wit:)

EXHIBIT "A."

I, Charles La Tour Furey, of the City of Chicago, County of Cook and State of Illinois, being over twenty-one years of age, and being of sound mind and memory, do by these presents make and declare the same to be my last will and testament, hereby revoking all former wills made by me.

First. I direct that all my just debts be paid.

Second. I devise to my loving wife, Carrie Rebecca Furey and to my loving daughter Caroline La Tour Furey, share and share alike, all the estate, right, title and interest in possession, reversion and remainder which I may have now and also at the time of my death of, in and to any lands, tenements, hereditaments, annuities or rents, charged upon or issuing out of them; and I also bequeath all goods and chattels and personal estate of every description whatsoever by will or testament or otherwise, to have and to hold by them share and share alike absolutely in their own right, this to apply to each of the species of property contained in this paragraph.

Third. If at my death my said daughter Caroline La Tour Furey is still a minor, not having reached the legal age of eighteen years, it is my wish and I request that my said wife Carrie Rebecca Furey

and my friend James L. Bigelow be appointed jointly guardians of my said daughter Caroline La Tour Furey.

Fourth. I nominate my said wife Carrie Rebecca Furey and my said friend James L. Bigelow to be jointly the executrix and the executor, with proper bond, of this my last will and testament.

Fifth. In event of the death of either the said Carrie Rebecca Furey or the said James L. Bigelow, it is my wish and I request that

Joseph W. Latimer, 3551 Ellis Avenue, Chicago, Illinois,
271 John B. Knight, 5634 Calumet Avenue, Chicago, Illinois,
Elizabeth C. Hawley, 16 Astor Street, Chicago, Illinois,

the survivor be appointed sole guardian of the said Caroline La Tour Furey, and sole executrix or executor, as the case may be, of this my last will and testament.

Witness my hand and seal this twenty seventh day of February, A. D. 1902.

CHARLES LA TOUR FUREY. [SEAL.]

We, Joseph W. Latimer, John B. Knight and Elizabeth C. Hawley do hereby certify that we were each present when the above instrument was signed and witnessed the signature of the said Charles La Tour Furey, who declared the foregoing instrument to be his own free and voluntary act and deed, and to be his last will and testament that he signed the same in our presence, and at his request we signed the same as witnesses in his presence and in the presence of each other.

Dated this twenty-seventh day of February, A. D. 1902.

JOSEPH W. LATIMER,
2551 *Ellis Avenue, Chicago, Illinois.*
JOHN B. KNIGHT,
5634 *Calumet Avenue, Chicago, Illinois.*
ELIZABETH C. HAWLEY,
16 *Astor Street, Chicago, Illinois.*

272 Will approved and admitted to record in open court this 8th day of Dec. A. D. 1908.

CHARLES S. CUTTING,
Probate Judge.

STATE OF ILLINOIS,
County of Cook, ss:

In the Probate Court of Cook County.

Proved and admitted to record in open court this 8th day of Dec. A. D. 1908.

GUY GUERNSEY, *Clerk.*

273 STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to all to whom these presents shall come, Greeting:

Know Ye, That whereas, Charles La Tour Furey late of the County of Cook, and State of Illinois, died on or about the 29th day of Nov. A. D. 1908, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that Carrie R. Furey has been appointed executrix in and by the said last will and testament, to execute the same, and to the end that said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize her the said Carrie R. Furey as such executrix to collect and secure all and singular the goods and chattels rights and credits which were of the said Charles La Tour Furey at the time of his deceased, in whosesoever hands or possession the same may be found, in this State, and well and truly to perform and fulfill all such duties as may be enjoined upon her by the said will, so far as there shall be any property, and the law charge her and in general to do and perform all other acts which now or hereafter may be required of her by law.

Witness, Guy Guernsey, Clerk of the Probate Court of said County of Cook, and the seal of said Court, this 8th day of Dec. A. D. 1908.

[L. S.] GUY GUERNSEY, *Clerk.*

274 STATE OF ILLINOIS,
County of Cook, ss:

I, Guy Guernsey, Clerk of the Probate Court of Cook County, in the state aforesaid, do hereby certify that the within is a true and correct copy of the last will and testament of Charles La Tour Furey deceased, and of Letters Testamentary issued thereon, on the 8th day of Dec. A. D. 1908, to Carrie R. Furey, now in force, as it appears from the originals on file, and from the records of the Probate Court in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Probate Court, at Chicago, in said County, this 8th day of Dec. A. D. 1908.

[Seal of the Probate Court of Cook County, Illinois, Dec. 2, 1877.]

GUY GUERNSEY, *Clerk.*

275 [Endorsed:] Doc. —. Page —. Probate Court of Cook County. Estate of Charles La Tour Furey, Deceased. Letters Testamentary to Carrie R. Furey Filed Dec. 8, 1908. A. D.

190–. Guy Guernsey, Clerk. Recorded in Probate Documentary Record of Executors' Bonds and Letters. Book No. —. Page —. —— ——, Clerk.

276 Exhibit "B" referred to in the foregoing bill is in the words and figures as follows, to-wit:

Certificate of Incorporation.

STATE OF WEST VIRGINIA:

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, do hereby certify that an Agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The American Investment Guaranty Company for the purpose of receiving and investing money and making investment contracts to be sold on installment payments; and procuring for such of the investors in such investment contracts as may so desire policies of life insurance and of acting as agent and trustee for life insurance companies and for such investors:

Which corporation shall keep its principal office or place of business at Chicago, in the County of Cook and State of Illinois, and is to expire on the first day of July, A. D. 1942. And for the purpose of forming said corporation, we have subscribed the sum of two hundred thousand dollars, to the capital thereof and have paid in on said subscription the sum of twenty thousand dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to one million dollars ($1,000,000.00) in all. The capital so subscribed is divided into shares of one hundred dollars ($100.00) each, which are held by the undersigned respectively as follows, that is to say: by

Oliver H. Horton, Chicago, Illinois	250	shares.
Lewis W. Pitcher, " "	250	"

277

Edward A. Bigelow, Chicago, Illinois	150	shares.
William D. Preston, " "	100	"
James L. Bigelow, " "	100	"
John P. Wilson, " "	50	"
Frank D. Lewis, Indianapolis, Indiana	250	"
Herman Kuehn, Detroit, Michigan	250	"
Thomas M. Hoyne, Chicago, Illinois	10	"
Alfred P. Bigelow, " "	10	"
Willis F. Johnson, " "	50	"
J. B. Knight, " "	530	"

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 14th day of July, 1892.

O. H. HORTON.
LEWIS W. PITCHER.
EDWARD A. BIGELOW.
WILLIAM D. PRESTON.
JAMES L. BIGELOW.
THOS. M. HOYNE.
JOHN P. WILSON.
FRANK D. LEWIS.
HERMAN KUEHN.
J. B. KNIGHT.
WILLIS F. JOHNSON.
ALFRED P. BIGELOW.

278 Wherefore, the corporators named in the said Agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the First day of July, nineteen hundred and forty-two, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this nineteenth day of July eighteen hundred and ninety-two.

[State of West Virginia, Montani Semper Liberi.]

WM. A. OHLEY,
Secretary of State.

279 Copy.

EXHIBIT "B."

Certificate.

STATE OF WEST VIRGINIA:

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that on the 19th day of July, 1892, a certificate of incorporation was issued in due form, from my said office to The American Investment Guaranty Company, as appears from the records of my said office; and I further certify that, on the 28th day of January, 1898, the following resolution, agreement, certificate and affidavit were produced to me, in my said office, which resolution, agreement, certificate and affidavit are in the words and figures following:

At the annual meeting of the stockholders of The American Investment Guaranty Company, held at room 54, Brother Jonathan Building, Number- 2 and 4 Sherman Street, Chicago, on the twelfth day of January, 1898, at eleven o'clock A. M. said meeting having been especially called for the purpose of changing the corporate

name, and for increasing the purposes for which the Company was formed; all the stockholders having had due notice thereof, it was

Resolved, That the company eliminate from its corporate title the word "Investment", and that hereafter, the name of the corporation shall be "American Guaranty Company of Chicago", instead of the "American Investment Guaranty Company."

It was further resolved, That the Company hereby adopt a new agreement, so that it shall be for the purpose of

(1) To enter into contract with individuals, firms and corporations.

(2) To act as and transact the business of Agent, and as such to

(*b*) acquire, purchase, hold, sell, dispose of, pledge and
280 otherwise deal in stocks, bonds, securities, and evidences of indebtedness or personal property, and to obtain and furnish information concerning same.

(*c*) To acquire by purchase, lease, mortgage, or otherwise hold real estate, and to sell, transfer, mortgage, lease, or otherwise dispose of same.

(*d*) To represent individuals in their dealings with firms, corporations associations or persons, in the transaction of any lawful business.

(3) To act as Receiving and Disbursing Agent for persons or corporations, in any business transaction.

To guarantee the contracts and obligations of Individuals, firms, corporations or associations, in any business transactions, and to do and perform all such lawful acts as may be necessary or expedient in the conduct of its said business.

We, the undersigned, Stockholders of The American Investment Guaranty Company, owning the number of shares of the capital stock of said company, set opposite our names, hereby consent to the change in the corporate name, and to the new agreement for said Company, adopted by the foregoing resolution.

Given under our hands, this 12th day of January, A. D. 1898.

PERCIVAL STEELE,	1005	shares.
JAMES L. BIGELOW,	one	"
DAVID R. LAMONT,	one	"
D. E. TOWN,	one	"
FRANK D. LEWIS,	310	"
A. P. BIGELOW,	10	"
JESSE W. ROBERTS,	one	"

We, Percival Steele, President, and David R. Lamont, Secretary, of the American Investment Guaranty Company, hereby
281 certify that the persons whose names are signed above, own the number of shares of capital stock of said company, set opposite their names, respectively; that they are a majority of the stockholders of said company, and that the shares of capital stock so owned by them are a majority of the shares of capital stock of said company; and we further certify that the resolution set forth herein is a true copy of the resolution passed at the stockholders'

meeting of said company, on the 12th day of January, 1898, and that the same appears upon the records of said company.

PERCIVAL STEELE,
President.

[SEAL.] DAVID R. LAMONT,
Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

I, Roscoe Linscott Roberts, a notary public in and for the county of Cook, in the State of Illinois, do hereby certify that A. P. Bigelow, James L. Bigelow, Percival Steele, D. E. Town, Jesse E. Roberts, David R. Lamont and Frank D. Lewis, stockholders of The American Investment Guaranty Company, personally known to *us* to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged to me that they, and each of them, signed the within certificate, for the uses and purposes therein set forth, and that the said resolution therein contained was passed at a meeting of the stockholders of The American Investment Guaranty Company, held in the City of Chicago, in the County and State aforesaid, on the twelfth day of January, 1898.

Given under my hand and notarial seal this 21st day of January, 1898.

ROSCOE LINSCOTT ROBERTS,
[SEAL.] *Notary Public.*

282 Wherefore, I do declare the name of the said corporation from this date henceforth to be American Guaranty Company of Chicago; and I further declare the stockholders of said corporation, their successors and assigns, to be from this date until the expiration of the period named in the said certificate of Incorporation issued from my said office, on the 19th day of July, 1892, to said The American Investment Guaranty Company, a corporation by the name of American Guaranty Company of Chicago, and for the purpose set forth in the foregoing resolution and agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-eighth day of January, 1898.

WM. M. O. DAWSON,
[G. S.] *Secretary of State.*

Certificate.

283 STATE OF WEST VIRGINIA:

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that Charles L. Furey, Vice-President of the American Guaranty Company of Chicago, a corporation created and organized under the laws of the State of West Virginia, has certified to me under his signature and the corporate seal of said corporation, that, at a general meeting of the stockholders of said

corporation, regularly held pursuant to law, at the office thereof, in the city of Chicago, State of Illinois, on the 13th day of April, 1901, at which meeting a quorum of the stock and of the stockholders was present, the following resolution was duly and regularly adopted and passed to-wit:

"Resolved, That the authorized capital of the American Guaranty Company of Chicago be reduced from ten thousand shares of the par value of 100 dollars each to five thousand shares of the par value of 100 dollars each, so that the authorized capital stock of said corporation shall be $500,000 all subscribed and paid for."

Wherefore, I do declare said decrease of the authorized capital stock as set forth in the foregoing resolution authorized by law.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-seventh day of April, 1901.

WM. M. O. DAWSON,
[G. S.] *Secretary of State.*

284 (*Certificates under Section 906, Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
State of West Virginia,
Office of Secretary of State:

I, C. W. Swisher, Secretary of State of the State of West Virginia, being the officer who, under the constitution and laws of said state, is authorized to issue certificates of incorporation, of all companies incorporated under the laws thereof, and being the officer authorized to issue certificates certifying changes in and amendments to such certificates of incorporation, and being the officer who is the keeper of all the records and papers relating to the creation of such incorporated companies and of changes in and amendments to said certificates of incorporation, including the powers of attorney of such incorporated companies, appointing a resident agent or attorney in said State, and of the reports of such incorporated companies, and being the officer authorized to authenticate exemplifications of the same, do hereby certify that the foregoing and annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as said Secretary of State, and found to be a true and correct copy of the certificate of New Agreement and change of name of the American Investment Guaranty Company — of Chicago, dated the 28th day of January 1898, and of the certificate of decrease, dated the 27th day of April, 1901, and recorded in the records of Corporations of my said office, and that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

285 In Testimony whereof I have Hereunto attached my official signature and the Great Seal of the State of West Virginia, at the Capitol of the City of Charleston, this 5th day of August, 1907.

[GREAT SEAL.] C. W. SWISHER,
Secretary of State.

286 Exhibit "C" referred to in the foregoing bill is in the words and figures as follows, to-wit:

Investment.

UNITED STATES OF AMERICA:

Number —.

American Guaranty Company of Chicago. —

Know all Men by these Presents that whereas —— —— hereafter styled Nominator, has paid to the American Guaranty Company of Chicago —— Dollars in advance and agrees to pay a like sum on the fifth day of —— hereafter until instalments for —— years have been made.

Now therefore the said American Guaranty Company hereby covenants and guarantees that on the fifth day of —— Nineteen Hundred and ——, upon due surrender of this Indenture, provided it is then in force, to pay unto —— —— hereafter styled Nominee, the sum of —— Dollars in Gold Coin of the United States of America, or in lieu thereof, to deliver at its home office —— registered ten year five per cent Coupon Gold Bonds of the denomination of One Thousand Dollars each, said Bonds to be in the form of the Specimen Bond herewith. The application herefor and the privileges and conditions on the third page hereof form a part of this Contract.

287 In Witness Whereof The American Guaranty Company, of Chicago, has caused this instrument to be executed in its name and by its proper officers and at its General Offices at Chicago, Ill., this — day of —— 190–.

Canceled.

—— ——, *Secretary.*

Canceled.

—— ——, *President.*

Western Bank Note Co. Chicago.

288 Privileges and Conditions.

1. As security for the redemption of this Indenture, the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust, sundry moneys, or other securities such as banks and trust companies are authorized to invest in, first mortgages on real estate, or bonds issued by the United States of America or municipalities thereof to such an amount as shall equal in the aggregate seventy-five per cent of the surrender value of this obligation.

2. The Nominator may, after — full years' instalments have been made, surrender this Indenture, and upon such surrender, duly made, receive a paid-up Certificate for the amount shown in the schedule endorsed hereon; the maturity date of said paid-up Certificate to be coi-cident with the maturity date of this Indenture; said paid-up Certificate, at its maturity, is payable in gold coin or in ten year five per-cent interest bearing bonds of equal value, at the option of the holder.

Or this Indenture may be surrendered after — full years' payments have been made, and upon such surrender the Company will pay in cash therefor, at its general office a sum not less than the amount shown in the schedule hereon.

3. The Nominee, executors, administrators, legal representatives or assigns may renew this Indenture to full maturity upon the same terms and conditions as the Nominator.

Or they may surrender this Indenture and when duly surrendered receive either the paid up Certificate or the cash value as shown in the schedule hereon.

4. This Indenture is issued with the express understanding that the Nominator may at any time during its continuance sub-
289 stitute any other person or persons as Nominee by giving written notice accompanied by this Indenture, such change to be duly endorsed hereon.

5. Should default be made at any time hereafter in the payment of any installment due under this Contract the Company will waive such default and accept payment of said instalment, provided the amount thereof with interest thereon at five per cent per annum from date of default be tendered to it within sixty days after such default.

6. All payments provided in this obligation to be made either by or to the owner hereof are due and payable at the general offices of the American Guaranty Company in the City of Chicago, Illinois, and such payments due the Company may be made elsewhere only when exchanged for its receipt, signed by its President, Vice-President, Secretary, Treasurer or Cashier.

Loans.

7. The American Guaranty Company will loan the owner or legal holder hereof, such sum or sums as are shown in the schedule, accepting said Indenture as collateral security for said loan.

SCHEDULE.

Amount of paid-up certificate to which the holder hereof shall be entitled after instalments for — years shall have been paid.		Cash value or amount that the company will loan the holder hereof after it has been in force — years.	
At end of—		At end of—	
1st year.....	$.....	1st year.....	$.....
2d "	$.....	2d "	$.....
3d "	$.....	3d "	$.....
4th "	$.....	4th "	$.....
5th "	$.....	5th "	$.....
6th "	$.....	6th "	$.....
7th "	$.....	7th "	$.....
8th "	$.....	8th "	$.....
290			
9th "	$.....	9th "	$.....
10th "	$.....	10th "	$.....

SCHEDULE—(Continued).

Amount of paid-up certificate to which the holder hereof shall be entitled after instalments for — years shall have been paid.	Cash value or amount that the company will loan the holder hereof after it has been in force — years.
At the end of—	At end of—
11th year..... $.....	11th year..... $.....
12th " ..... $.....	12th " ..... $.....
13th " ..... $.....	13th " ..... $.....
14th " ..... $.....	14th " ..... $.....
15th " ..... $.....	15th " ..... $.....
16th " ..... $.....	16th " ..... $.....
17th " ..... $.....	17th " ..... $.....
18th " ..... $.....	18th " ..... $.....
19th " ..... $.....	19th " ..... $.....
20th " ..... $.....	20th " ..... $.....

8. No agent has the right or power to modify this Indenture or bind the Company by any promises or representation, information or statement not contained herein.

Canceled. Canceled.

L. W. PITCHER, *Secretary.*

291

This Contract At Maturity
Is Convertible Into
5% Ten Year
Gold Bonds
Principal and Interest Payable in
Gold Coin
At the
General Office Of The
American Guaranty Company
In The
City of Chicago,
Illinois, U. S. A.

Convertible Contract
Number —
Of the
American
Guaranty Company
of Chicago.
Period — Years.
Amount
($——)
First Payment $——.
Nominator —— ——,
Residence ——.

$..... .....190..

Received from the American Guaranty Company of Chicago. .....dollars in full for all claims under the within Contract terminated by.....

.....

.....

Witness:

.....

292 Exhibit "D" referred to in the foregoing bill is in the words and figures as follows, to-wit:

Service.

United States of America.

Number —.

American Guaranty Company of Chicago.

Know all Men by these Presents, that whereas —— ——, hereinafter styled Nominator, has paid to the American Guaranty Company of Chicago the sum of — Dollars. Now therefore the said American Guaranty Company of Chicago, Hereby Covenants and Agrees to act as his agent and as such agent on his behalf to make the payments specified in his application, copy of which appears on the third page and is with all its conditions made a part hereof.

This Contract may be renewed from time to time at the option of the holder for the period of — years upon the payment of the sum of — Dollars on the fifth day of —— hereafter until instalments for — years have been made; and if renewed for the full period of — years, the American Guaranty Company Hereby Covenants and Guarantees to Pay unto —— ——, of ——, hereinafter styled Nominee, on the fifth day of ——, 190–, — Dollars in gold coin of the United States of America, provided no loans or advances made hereon remain unpaid and on due surrender of this Contract.

293 In Witness Whereof, The American Guaranty Company, of Chicago, has caused this instrument to be executed in its name by its proper officers and at its General Offices at Chicago, Ill., this — day of ——, 190–.

Canceled. Canceled.

CHAS. L. FUREY,
Vice-President.

—— ——, *Secretary.*

Western Bank Note Co. Chicago.

294 *Privileges and Conditions.*

1. All payments provided in this obligation to be made either by or to the owner hereof are due and payable at the general offices of the American Guaranty Company in the City of Chicago, Illinois.

2. It is expressly understood that in paying insurance premiums or assessments for the applicant the Company will act solely as agent and will have no interest in and assume no liability under the insurance policies or certificates.

3. After the owner has exercised his option of renewal and this Contract has been in force for the period of two full years, then in default of the payment of the sum necessary to renew this Contract for the next period the owner may exercise any one of the following options: (*a*) To surrender this Contract at any time within ninety days after first default and receive a Paid-up Contract equal

to the paid-up value at the time of such default, as shown by Schedule below, the same to mature at the maturity date of this agreement, but no Paid-up Contract shall be so issued until all advances or loans made hereon shall have been satisfied. (*b*) To surrender this Contract and receive from the Company in cash a sum not less than the full reserve value, as shown by Schedule below, less the amount of any advances or loans made hereon. (*c*) Should the owner fail to exercise either of the foregoing options, the Company will apply the reserve value as hereinafter defined to the making of the payments designated in the application herefor for such period as the reserve value will suffice to pay; and such disbursements shall operate as full payment, satisfaction, and discharge of this Contract.

4. Should the owner fail to exercise his option of renewal previous to the fifth day of ——, then this Contract will be
295 terminated without notice and all payments provided for will cease.

5. Should the payments designated in the application here for at any time be less than the amount stated in said application, the difference shall be credited to the owner at the end of the current year and paid over — the owner upon demand and, if not sooner paid, shall be added to the principal sum due whenever this Contract is terminated.

6. If at any time the payments designated in said application shall require a sum in excess of the amount herein provided to be made, the Company will advance such additional amount up to but not exceeding the then present reserve value of this Contract, such advance payments to be considered as a loan, which may be refunded, or shall constitute a part payment of any moneys to become due from the Company.

7. It is understood and agreed that at maturity the Nominator may at his option leave with the Company so much of the maturity value of this Contract as shall at five per cent per annum equal the sum then required for disbursements, whereupon the Company will continue to act as agent until released from making said disbursements by surrender of this Contract, at which time the fund so remaining, less any loans or advances then unpaid, will be paid to the Nominator; or at any time prior to maturity when the accumulated net reserve hereon equals an amount on which the interest at the rate of five per cent per annum shall equal the sum then required for disbursements, the Company will upon application in writing waive further payment of instalments and continue to act as agent until relieved from making such disbursements by surrender of this Contract, at which time said reserve and any accumulations less the amount of any advances or loans remaining unpaid hereon, will be paid to the Nominator.

296 8. The Nominee, executors, administrators, legal representatives or assigns may renew this Contract to full maturity upon the same terms and conditions as the Nominator. This Contract is issued with the understanding that the Nominator may at any time during its continuance substitute any other person or persons as Nominee by giving written notice, duly acknowledged, accompanied by this Contract. Such change to be duly indorsed

hereon. The Company, however, will assume no responsibility by reason of consenting to any assignment.

9. As security for the redemption of this Contract the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust with an institution legally empowered to act as such trustee, sundry moneys or other securities such as banks and trust companies invest in, first mortgages on real estate, or bonds issued by the United States of America or municipalities thereof, which shall constitute the reserve under this Contract to such an extent as shall equal in the aggregate not less than seventy-five per cent of the reserve value.

Loans.

11. The American Guaranty Company will loan the owner or legal holder hereof, such sum or sums which shall equal the surrender value of this Contract, accepting said Contract as collateral security for said loan.

297 SCHEDULE.

Paid-up values to which the holder hereof shall be entitled.		Reserve value or amount that the company will loan the holder hereof.	
At end of—		At end of—	
2d year	$	2d year	$
3d "	$	3d "	$
4th "	$	4th "	$
5th "	$	5th "	$
6th "	$	6th "	$
7th "	$	7th "	$
8th "	$	8th "	$
9th "	$	9th "	$
10th "	$	10th "	$

Paid-up values to which the holder hereof shall be entitled.		Reserve value or amount that the company will loan the holder hereof.	
At end of—		At end of—	
11th year	$	11th year	$
12th "	$	12th "	$
13th "	$	13th "	$
14th "	$	14th "	$
15th "	$	15th "	$
16th "	$	16th "	$
17th "	$	17th "	$
18th "	$	18th "	$
19th "	$	19th "	$
20th "	$	20th "	$

Canceled. Canceled.

L. W. PITCHER, *Secretary.*

Examined by —— ——.

298 *Application to American Guaranty Company of Chicago.*

I hereby make application for a Service Contract whereby you will, as my agent, assume the payment (as the same may become due and upon due notice) of such sum or sums as are necessary to maintain my Insurance for the period of — months in the Companies, Associations of Societies enumerated below, of which I am a member in good standing at this date and which now require payments aggregating $—— per annum. The Contract to mature on the 5th day of —— Nineteen Hundred and —— for $—— for which I have this day paid the soliciting agent the sum of $——, same being the first —— payment thereon. Future payments to be made ——, at the same rate, to continue only so long as I may desire to keep the Contract in force, it being understood and agreed that after payments for — years have been made, no further payments will be required.

I nominate —— of —— as the person to whom the value of the Contract shall be paid on the 5th day of —— 19—, and in the event that I shall for any cause at any time during the life of said Contract become incapacitated from receiving benefits of the agency so to be created I authorize and direct the Company to extend to my said Nominee all the benefits, rights and privileges in said Contract enumerated.

299 I reserve the right to cancel or change these instructions, and to substitute any other person or persons as nominee, and to surrender the Contract and receive the benefits provided therein.

The Contract is not to be regarded as binding upon the Company until the first installment on same has been paid in cash. Dated at..... this.....day of .....190.....

(Sign here)..... ....
Post Office Address..... .....
City and State.....
Occupation.....

Form of Contract to be issued:

.....
....Agent.

I am a member of the following Societies or Associations, to whom payments are to be made in my behalf, until further instructions:

Name of society.	Name and number of subordinate body.	Name and address of collector to whom remittances are to be made.
....	....	.....
....	....	....
....	....	.....

300

Amount of each assessment.	Assessment has been paid for month of—	Company to remit for assessment due.	Amount of quarterly dues.
.....	.....	.....	$.....
.....	.....	.....	Company to remit for quarter ending.
.....	.....	.....	.....

I am a policy holder in the following Companies, to whom payments are to be made in my behalf, until further instructions:

Name of company.	Name and address of agent to whom remittances are to be made.	Amount of premium.
.....	.....	$.....
.....	.....	.....
.....	.....	.....

How paid.	When is next payment due.
.....	.....

Canceled. Canceled.

301 *Service Contract of the American Guaranty Company of Chicago.*

Number, —.
Period, — Years.
Amount, $ —.
First Payment, $ —.
Nominator, —— ——.
Residence, —— ——.

302 $——. —— —, 190–.

Received from the American Guaranty Company of Chicago, — Dollars in full for all claims under the within Contract.

—— ——.

Witness —— ——.

(Exhibit "E" referred to in the foregoing bill is in the words and figures following, to-wit:)

(Here follow fac-similes marked pages 303, 304, and 305.)

DOLLARS
5000

NUMBER
A

AMERICAN
GUARANTY COMPANY
OF CHICAGO

. Hereby covenants and guarantees to pay to the order of the applicant an annual income of . Five Hundred Dollars for the period of ten years, being in all the sum of . ~~Five~~ Thousand Dollars payable only upon presentation and surrender of this instrument

AMERICAN GUARANTY COMPANY

OF CHICAGO

Hereby covenants and guarantees to pay to the order of the applicant an annual income of ~~Five Hundred~~ Five Thousand Dollars for the period of ten years, being in all the sum of ~~Five~~ Ten Thousand Dollars payable only upon presentation and surrender of the income coupons hereto attached as they severally become due, subject to the conditions set forth therein, the last coupon to be accompanied by this contract for cancellation; or upon presentation and surrender of this contract with all coupons attached there will be paid ~~Three~~ Seven Thousand ~~Seven~~ Five Hundred ~~and Fifty~~ Dollars in Gold Coin on the fifth day of _____, 192__.

This contract is made in consideration of the application of _____ of _____ and the payment of ~~Fifteen~~ Thirty Dollars due _____ 5th, 190__ the receipt of which is hereby acknowledged, and the further payment of the same amount to be made on the fifth day of each and every month thereafter until payments for 180 months shall have been made in all, after which the coupons hereto attached will be countersigned upon presentation.

The privileges, conditions, and schedule printed on the third page hereof, together with the application herefor, are made a part of this contract.

IN WITNESS WHEREOF, *the American Guaranty Company of Chicago has caused this contract to be executed in its name and by its proper officers and at its general offices at Chicago, Illinois, this _____ day of _____, 190__.*

REPUBLIC BANK NOTE COMPANY
PITTSBURGH PA

$500
AMERICAN GUARANTY COMPANY
OF CHICAGO
FIFTH
WILL PAY AT ITS GENERAL OFFICES IN THE CITY OF CHICAGO TO THE ORDER OF THE LEGAL HOLDER FIVE HUNDRED DOLLARS IN GOLD COIN. THIS COUPON WILL BE COUNTERSIGNED BY THE TREASURER OF THE COMPANY UPON PRESENTATION AT ANY TIME AFTER ALL PAYMENTS HAVE BEEN MADE ON INCOME CONTRACT OF WHICH IT FORMS A PART, AND IS NOT PAYABLE UNTIL SO COUNTERSIGNED
No A
Left Pitcher
SECRETARY

$500
AMERICAN GUARANTY COMPANY
OF CHICAGO
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No A
Left Pitcher
SECRETARY

PRIVILEGES AND CONDITIONS

Section 1. As security for the redemption of this Contract the American Guaranty Company of Chicago (hereafter styled the Company) covenants and guarantees that it will keep on deposit in trust with an institution legally empowered to act as such trustee, cash, first mortgages on real estate, bonds issued by the United States of America or municipalities thereof, and such other securities as banks and trust companies invest in to an amount equal to the cash loan value hereunder, less the amount of any unpaid loans hereon.

Section 2. At any time after this contract has been in force two (2) or more full years, provided all payments previously due have been made, it may be exchanged for a Paid-up Income Contract for the amount specified in the Paid-up Income Schedule indorsed hereon. The coupons forming a part of any Contract for which this may be exchanged will be payable at the same time and in the same manner as the coupons attached hereto would have been paid had this Contract been continued to maturity.

Section 3. Should this Contract be exchanged for a Paid-up Income Contract and any loans made on this Contract remain unpaid at the time of such exchange, an assignment of the Paid-up Income Contract as full collateral security will be accepted.

Section 4. After payments have been made covering a period of twelve (12) months the Company upon request for the purpose only of making not more than twelve (12) monthly payments in advance will loan the amount required.

Section 5. At any time the Company will loan the legal holder in cash any amount not exceeding the cash loan value of any year for which all payments have been made, less the amount of any unpaid loans hereon.

Section 6. After payments for two (2) or more full years have been made the Company will loan the amount stipulated in the Advance Loan Schedule less one year's interest, and the amount of any unpaid loans, provided twelve (12) monthly payments in advance are made at the time the loan is secured.

Section 7. The assignment of this Contract will be accepted as full collateral security for any loan made hereon.

Section 8. Any loan made hereon will be renewed at maturity upon request.

Section 9. Interest on loans and on renewals of same, will be payable in advance, but any part of the sum borrowed may be repaid at any time previous to maturity, interest being retained only for the actual time the loan remains unpaid.

Section 10. The amount of all loans remaining unpaid will be deducted from any settlement made hereunder.

Section 11. Upon surrender of this contract for cancellation, at any time after it has been in force two (2) or more full years, the Company will pay to the legal holder an amount equal to the cash loan value at the end of the last year covering which all payments have been made.

Section 12. The payments provided in this Contract to be made by or to the owner are due and payable at the general offices of the Company; and such payments due the Company, if made elsewhere, will not be binding upon the Company until a receipt is issued for same signed by its president, vice-president, secretary, treasurer or cashier.

Section 13. Should the stipulated payments hereunder be discontinued before the period of twenty-four (24) months has been covered, all moneys previously paid shall remain the property of the Company, but the amount of same will be allowed as a credit on a new Contract provided the legal holder hereof within one year from the time of such discontinuance applies for said new Contract and makes at least one monthly payment in advance. Failure to make such application and payment within the time specified shall work an unconditional forfeiture of this Contract and all payments made hereon.

Section 14. At the expiration of one hundred eighty (180) months, all payments having been made for that time, at the option of the legal holder this Contract with all coupons attached may be surrendered for cancellation; and upon such surrender duly made the Company will pay to the legal holder THIRTY-SEVEN HUNDRED FIFTY DOLLARS ($3750.00) IN GOLD COIN; or it may be exchanged for a Paid-up Income Contract for FIFTY-SIX HUNDRED TWENTY-FIVE DOLLARS ($5625.00) payable in fifteen (15) equal annual instalments of THREE HUNDRED SEVENTY-FIVE ($375.00) each; or it may be exchanged for a Paid-up Income Contract for SIXTY-TWO HUNDRED FIFTY DOLLARS ($6250.00), payable in twenty (20) equal annual instalments of THREE HUNDRED TWELVE DOLLARS FIFTY CENTS ($312.50) each.

Section 15. At the maturity of any coupon hereunder, or at the time any payment is due under the terms of any contract for which this Contract may be exchanged, upon due surrender of the remaining coupons or Contract providing for payments the Company will pay to the legal holder thereof the then cash value according to its present published table of conversion rates.

Section 16. Should the applicant for this Contract die and his or her heirs or legal representatives not desire to avail themselves of any of the privileges originally extended, the Company will upon request made within sixty days after said decease waive the conditions of the Contract and upon surrender of same with all coupons attached permit the withdrawal of the full amount of all moneys paid hereon.

Paid-up Income Schedule Referred to in Section 2.		Cash Loan Value Referred to in Sections 1/5 &11		Advance Loan Schedule Referred to in Section 6.	
At end of		At end of		At end of	
2nd year	$1333.32	2nd year	$ 316.80	2nd year	$ 720.00
3rd "	$2000.00	3rd "	$ 655.20	3rd "	$1080.00
4th "	$2666.66	4th "	$ 993.60	4th "	$1440.00
5th "	$3333.32	5th "	$1332.00	5th "	$1800.00
6th "	$4000.00	6th "	$1685.80	6th "	$2176.38
7th "	$4666.66	7th "	$2064.84	7th "	$2579.62
8th "	$5333.32	8th "	$2475.74	8th "	$3016.74
9th "	$6000.00	9th "	$2927.34	9th "	$3497.16
10th "	$6666.66	10th "	$3429.74	10th "	$4031.62
11th "	$7333.32	11th "	$3995.30	11th "	$4633.30
12th "	$8000.00	12th "	$4638.30	12th "	$5317.34
13th "	$8666.66	13th "	$5376.30	13th "	$6102.44
14th "	$9333.32	14th "	$6230.70	14th "	$7011.38
15th "	$10000.00	15th "	$7500.00	15th "	$7978.72

Section 17. The Company will assume no responsibility by reason of consenting to any assignment of this Contract.

Section 18. No agent has the right or power to modify this Contract or bind the Company by any promise or representation, information or statement not contained herein.

Secretary

306 (And at another day to wit: At a Circuit Court for Kanawha County, held at the Court House thereof, on the 15th day of June, 1909.)

In Chancery. No. 2019½.

CARRIE REBECCA FUREY
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

This day came V. L. Black, Receiver in this cause, presented his report, marked Receiver's Report No. 1, showing that he had been unable to find any property of the defendant Company in this state but that all the property and assets of said defendant had, under a decree in the equity cause of Carrie Rebecca Furey as Executrix of the last will and testament of Charles La Tour Furey, deceased, and in her own right, and Caroline La Tour Furey, against said Company, pending in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division thereof, in which District was the principal office of said company, been by said last named Court placed in the hands of a receiver appointed by it, and were being administered by said Court, accompanying his said report with copies of the proceedings had in said last named case, which report is ordered to be filed.

(Report of V. L. Black, Receiver, referred to in the foregoing order, is in the words and figures following, to-wit:)

STATE OF WEST VIRGINIA,
County of Kanawha, ss:

In the Circuit Court of Kanawha County.

No. —.

307 CARRIE REBECCA FUREY
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Report of V. L. Black, Receiver.

Now comes V. L. Black, heretofore appointed Receiver of American Guaranty Company of Chicago, in the above entitled cause, and respectfully reports to this Honorable Court, as follows:

That on February 1, 1909, this court entered a decree dissolving said American Guaranty Company of Chicago, a corporation organized under the laws of the State of West Virginia, and appointed the undersigned V. L. Black, Receiver of all the assets and property of said American Guaranty Company in the State of West Virginia; that at the time of the appointment of the Receiver herein the principal office of said company was located in the City of Chicago and

State of Illinois, and that so far as your Receiver has been able to ascertain, all the property and assets of said Company were located at the office of said Company at Chicago, Illinois; that on February 2, 1909, the United States Circuit Court for the Northern District of Illinois, Eastern Division thereof, in the case of Furey et al. vs. American Guaranty Company of Chicago, No. 29,336, entered a decree (which is in full force and effect) appointing E. A. Potter of Chicago, Illinois, Receiver of the property and assets of said American Guaranty Company of Chicago, a certified copy of which decree is hereto attached, and marked "Exhibit A," and by reference
308 thereto made a part of this report; that said E. A. Potter, as such Receiver of said American Guaranty Company, has taken, and now is in possession of all the property and assets of said Company, and on March 26, 1909, made an inventory and report thereof to and filed the same in said United States Circuit Court for the Northern District of Illinois, Eastern Division thereof, a certified copy of which inventory and report is herewith attached and marked "Exhibit B," and by reference thereto made a part of this report.

Your Receiver further reports that the property and assets of said Company, so possessed by said E. A. Potter, as Receiver, as aforesaid, are now held by him subject to the orders and directions of said United States Circuit Court for the Northern District of Illinois, Eastern Division thereof, and that no distribution thereof has yet been made; the undersigned, as Receiver of the assets and property of said Company, within the State of West Virginia, has been unable to discover any property and assets of said Company within said State of West Virginia, but understands and states that all the assets and property of said Company were located at its principal office at Chicago, Illinois, and are now in the possession and control of said E. A. Potter, as Receiver, as aforesaid, subject to the orders of said United States Circuit Court.

The names and addresses of all contract holders and creditors of said Company, residing within the state of West Virginia, so far as your Receiver has been able to ascertain the same, are herewith attached, and marked "Exhibit C", and by reference thereto
309 made a part of this report.

Your receiver further reports that said United States Circuit Court, for the Northern District of Illinois, Eastern Division thereof, on May 26, 1909, entered an order directing all contract holders, and all other persons having claims against said Company, to file proofs of said claims on or before September 1, 1909, with James S. Hopkins, a Master in Chancery of said United States Circuit Court, a certified copy of which order is hereto attached, and marked "Exhibit D," and by reference thereto made a part hereof; and under and in accordance with said order notices have been sent out to all contract holders by said James S. Hopkins, Master in Chancery aforesaid, directing proofs of claim to be made, a copy of which notice is hereto attached, and marked "Exhibit E", and by reference thereto made a part hereof; that said Master has prepared the proof of claim referred to in such notice, a copy of which proof

of claim is hereto attached, and marked "Exhibit F", and by reference thereto made a part hereof.

All of which is respectfully submitted.

V. L. BLACK.
Receiver of American Guaranty Company of Chicago.

Charleston, W. Va., June 15th, 1909.

"EXHIBIT A."

In the Circuit Court of the United States, in and for the Northern District of Illinois, Eastern Division Thereof.

TUESDAY, *February 2nd*, 1909.

Present Hon. Christian C. Kohlsaat, Circuit Judge.

310 CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Upon reading and filing the verified bill of complaint in this cause, together with the exhibits in support thereof, and the answer of said American Guaranty Company, of Chicago, confessing the allegations contained in the bill of complaint filed herein to be true, and that said complainants are entitled to the relief therein prayed, and on motion of the counsel for complainants, and counsel for defendant appearing and consenting thereto, it is

Ordered by the court that Edwin A. Potter, of Chicago, in the County of Cook, in the State of Illinois, be and he is hereby appointed Receiver of this Court, of all and singular the property of said American Guaranty Company of Chicago of every description, and of all moneys, claims in action, credits, bonds, stocks and other assets of every kind, and of all other property, real, personal and mixed, held or possessed by said company, or to which said company is entitled, or in which it has any interest, to have and to hold the same as an officer of and under the orders and directions of this Court.

The said Receiver is hereby authorized and directed to take immediate possession of all and singular the property, assets and effects above described, and each and every of the officers, directors, agents and employees of said American Guaranty Company of Chicago, and all other individuals, firms and corporations are
311 hereby required and commanded to forthwith on demand of said receiver turn over and deliver to such Receiver any and all property, assets and effects of every kind and description, books, papers and vouchers under their or any of their control and

belonging to or to which said American Guaranty Company of Chicago, is entitled, or in which it has any interest, and the said American Guaranty Company of Chicago, and its officers are hereby directed immediately to execute and deliver to the said receiver a deed or deeds of all real estate now owned or possessed by said company, and transfers and assignments of all the property, assets and effects of said Company.

Said Receiver is hereby fully authorized to institute and prosecute all such suits as he may deem necessary or proper and to defend all such actions against him as such receiver, and also to appear in and conduct the prosecution or defense of any suit or suits against said Company.

Said receiver is hereby authorized and directed to employ such counsel, attorneys, solicitors, agents, clerks and assistants as he may deem necessary or proper in the discharge of his duties as such Receiver.

Said Receiver is hereby authorized and directed to deposit all moneys coming into his hands as such Receiver in The American Trust & Savings Bank, of Chicago, Illinois, and such other bank or banks as the court may from time to time direct.

All creditors and contract-holders of said American Guaranty Company of Chicago are hereby enjoined from in any way intermeddling, by suit or otherwise, with all or any of the property, assets and effects hereby directed to be turned over to said
312 Receiver, and all officers, directors, agents and employees of said American Guaranty Company of Chicago, are hereby enjoined from interfering with or disposing of all or any of said property assets and effects of said American Guaranty Company of Chicago, in any way, except to transfer, convey and turn over the same to said Receiver.

Said Receiver is hereby required to file with the Clerk of the Court a proper bond in the penal sum of Fifty Thousand (50,000) *Thousand* Dollars, with The Empire State Surety Company of New York as surety, and said Receiver now here appears in open court and accepts his said appointment as Receiver herein, and now here presents said bond in the penal sum of Fifty (50) thousand dollars with said Surety, which said Bond the court now here finds to be proper in form and to have been properly executed, and now here approves the same.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, H. S. Stoddard, Clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the Order entered in said Court on the 2nd day of February, 1909, in the cause wherein Carrie Rebecca Furey et al. are the complainants and American Guaranty Company of Chicago is the defendant as the same appears from the original records and files thereof now remaining in my custody and control.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in said District, this 10th day of June, A. D. 1909.

H. S. STODDARD, *Clerk*. [SEAL.]
By JOHN H. R. JAMAR, *Chief Deputy*.

313 EXHIBIT B.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Equity. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Inventory of Assets and Schedule of Liabilities of said American Guaranty Company.

Edwin A. Potter, Receiver.
Mayer, Meyer & Austrian, Counsel for Receiver.

Chicago, March 26, 1909.

Circuit Court of the United States, Northern District of Illinois, Eastern Division.

Filed by leave of court Mar. 26, 1909.
H. S. STODDARD, *Clerk*.

314 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Equity. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Inventory of Assets and Schedule of Liabilities.

To the Honorable Judges of said Court:

Now comes Edwin A. Potter, receiver of the estate of said American Guaranty Company of Chicago, and respectfully reports that

since his appointment herein on February 2, 1909, he has been diligently and continuously engaged with a force of accountants in preparing an inventory of assets and a schedule of liabilities of said American Guaranty Company, and he now respectfully submits herewith to this honorable court an inventory of all of the property and assets of said American Guaranty Company, so far as they have come to the knowledge, information or possession of said receiver, and a complete schedule of all liabilities of said American Guaranty Company, so far as the books of said American Guaranty Company disclose the same. A condensed statement of said assets and liabilities is as follows:

Condensed Statement of Assets (Taken at Face Value) and Liabilities as of February 3, 1909, as Per Books.

Assets:		Special Fund.	General Fund.	Total.
Cash and in banks		$269,801.37	$118,215.19	$388,016.56
Real estate loans		46,750.00	73,642.00	120,392.00
Bonds		249,340.00	.....	249,340.00
Accounts receivable		.....	56,717.36	56,717.36
Bills receivable:				
General	$155,348.48			
Pearce & Sisson notes	2,327.94	.....	157,676.42	157,676.42
Bank stocks		.....	2,000.00	2,000.00
Instalment loans		.....	3,508.43	3,508.43
		$565,891.37	$411,759.40	$977,650.77
Loans on contracts		.....	431,583.30	431,583.30
		$565,891.37	$843,342.70	$1,409,234.07

Liabilities:	Based upon surrender value of contracts.	Based upon net amount cash paid in.
Due Contractholders under terms of Contracts	$1,513,345.62	$2,502,988.29
Deduct if set-offs be allowed	431,583.30	431,583.30
	$1,081,762.62	$2,071,404.99
Sundry credits and unpaid bills	3,993.33	3,993.33
	$1,085,755.95	$2,075,398.32

316 Said receiver further reports that he has inventoried said property and assets at their face or book value. The loans made on contracts by said American Guaranty Company amounting to $431,583.30, are a good asset in the opinion of the receiver for the face value thereof, if this court shall adjudicate that the estate is entitled to a set-off against the owners of the contracts, for the full amount of said loans, to secure which loans said estate holds said contracts. Among the real estate loans ($120,392.00) the accounts receivable ($56,717.36), and the bills receivable ($157,676.42), are a number of items that are worthless, or doubtful, and so far as the receiver's investigation has proceeded, it is his opinion that the three classes of assets just referred to, which have a total book or face value of $334,785.78, will probably not realize more than $150,000, being an estimated loss of $184,785.78.

The liabilities of said estate arise almost entirely on the 6,892 outstanding contracts of said American Guaranty Company.

The final amount of said liabilities will depend not only upon whether said estate is entitled to the set-off above referred to, but also upon the amount for which this court shall hold that the claims upon said contracts are provable. Under the terms of said contracts, those which have not run for two years have no surrender value. There has, however, been paid to said Company by the owners of said less than two year old contracts $253,225.22. The total surrender value of all outstanding contracts that have a surrender value is $1,513,345.92, and if this court shall allow a set-off of said $431,583.30 (the amount of the loans made by said Company to said contract holders on the security of said contracts), and if said $253,225.22 (paid on less than two year old contracts) be excluded, as liabilities, then the net liabilities of the estate are $1,085,755.95. To meet said liabilities said estate has assets of a total book or face value of $977,650.79, which amount is subject, however, to the estimated reduction of $184,785.78 hereinbefore referred to, leaving a net balance of assets of $792,864.99. If, however, the liabilities of said estate are to be measured upon a basis of total moneys paid into said Company, regardless of the surrender value of said
317 contracts, and regardless of the fact that certain of said contracts have no surrender value whatever, and if said set-off be allowed, then the total liabilities of said estate will amount to $2,075,398.32. If, on the other hand, the liabilities of said estate are to be measured upon still another and different basis, viz: that of the actuarial value of all said outstanding contracts, then and in that event the receiver is unable to now make an estimate of said liabilities, because the ascertainment of the actuarial value of said contracts will require several months' work, at a very considerable expense, by expert actuaries.

The receiver further reports that in addition to the foregoing questions that await solution by this court, the amount of the dividend that the contract holders will realize herein, will depend upon the extent to which the contract holders, who are interested in the special fund (the face value of which is $565,891.37, and which was turned over to the receiver under the decree of this court, entered

herein on March 6, 1909, against the Royal Trust Company), have a right to participate in the general fund, and also upon the extent to which the contract holders who are interested in the general fund have a right to participate in said special fund. There are 2,579 contracts upon which there was paid to said American Guaranty Company (after deducting the amount paid out) $423,983.68, which contracts have a net surrender value, after deductions, of $143,711.60, and which contracts according to their terms do not participate in said special fund.

Said inventory classifies and gives full details of the assets, and said schedule of liabilities shows the various classes of out-standing contracts, the total number of each, their total surrender value, the total amount paid out by the Company for contract holders and which amount the Company is entitled to have repaid, the total amount paid out by the Company to contract holders on loans and evidenced by the notes of the contract holders, and secured by their contracts, the total respective net surrender value of all of the respective classes of contracts which have a surrender value,
318 and the total net amount paid by contract holders on contracts not yet two years old, which have no surrender value.

All of which is respectfully submitted.

EDWIN A. POTTER,
Receiver of American Guaranty Company of Chicago.

MAYER, MEYER & AUSTRIAN,
Counsel for Receiver.

Chicago, March 26, 1909.

STATE OF ILLINOIS,
County of Cook, ss:

Edwin A. Potter, being first duly sworn, upon oath deposes and says that he has read the above and foregoing report, by him subscribed, and that the same and the annexed inventory of the assets and schedule of liabilities of the estate of said American Guaranty Company of Chicago are true to the best of his knowledge, information and belief.

EDWIN A. POTTER.

Subscribed and sworn to by said Edwin A. Potter, before me, a Notary Public, this twenty-sixth (26th) day of March, A. D. 1909.

[SEAL.] GEO. W. SPEICH,
Notary Public, Cook County, Illinois.

Endorsed: Filed Mch 26, 1909. H. S. Stoddard, Clerk.

319 & 320 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, H. S. Stoddard, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the inventory of assets and schedule of liabilities of said American Guaranty Company, filed in said court on the 26th day of March, A. D. 1909, in

the cause wherein Carrie Rebecca Furey, executrix, etc., *et al.*, are the complainants, and American Guaranty Company, of Chicago, is the defendant, as the same appears from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 26th day of March, A. D. 1909.

[SEAL.]

H. S. STODDARD, *Clerk*.
By JOHN H. R. JAMAR,
Chief Deputy.

321 "EXHIBIT C."

American Guaranty Company of Chicago.

List of Contract-holders Residing in West Virginia.

Name.	Address.
Marsh, Cash C.	Sisterville
Jackson, Alvin C.	Sisterville
Durham, C. F. H.	Sisterville
McCarty, Chas. D.	Wheeling
Higgins, W. H.	Wheeling
Harvey, Thos. H.	Huntington
Samsell, John G.	Morgantown
Denny, E. M.	Morgantown
Anderson, James E.	Fairmont
Ely, J. Richard	Fairmont
Colbun, John M.	Morgantown
Stemple, Edgar C.	Fairmont
Kinghorn, John L.	Wheeling
Berl, George	Wheeling
Wood, Charles P.	Wheeling
Reid, O. E.	Wheeling
Moffat, Thos. C.	Wheeling
Butts, John Seward	Wheeling
Jones, Frank P.	Wheeling
Jaeger, Ott	Wheeling
Becker, C. H.	Wheeling
Peabody, W. E.	Moundville
Linch, A. E.	Moundville
Hodson, E. E.	Wheeling
Wilson, I. B.	Moundville
Sigafoose, Frank D.	Moundville
Johnson, O. B.	Page
Strother, D. J. F.	Welch
Henritze, Thomas F.	Welch
Sale, J. Graham	Welch
Swope, B. O.	Welch
Morse, Phillip	Welch
French, Rose B.	Welch
Herzbrun, Josef	Welch
Young, P. A.	Charleston

322 "EXHIBIT D."

WEDNESDAY, *May* 26, 1909.

Present: Honorable Christian C. Kohlsaat, Circuit Judge.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

No. 29336.

CARRIE REBECCA FUREY et al., Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

On motion of counsel for Edwin A. Potter, Receiver herein, all parties to said cause having due notice hereof and being now in open court, and it now appearing to this court that the defendant, American Guaranty Company of Chicago, has been heretofore duly dissolved and that Edwin A. Potter, the Receiver herein, now has in his possession the property, assets and funds of said Guaranty Company, and that said property, assets and funds are subject to the claims of the contract-holders and other creditors and claimants of said Guaranty Company, in accordance with their respective rights and equities as may be hereafter determined, and that the surplus, if any, after paying the claims of such contract-holders, and other creditors and claimants, is subject to the claims of the stockholders of said Guaranty Company; and it appearing to the court that it will be necessary to distribute the property, assets and funds of said Guaranty Company among its respective contract holders, creditors, claimants and stock-holders, in accordance with their respective rights and equities,—

323 It is hereby ordered that all contract-holders, and all other persons having claims against said American Guaranty Company of Chicago, be, and they hereby are directed to present and file such claims on or before the first day of September, 1909, with James S. Hopkins, Esq., one of the Masters in Chancery of this court (to whom this cause has heretofore been referred), in such manner and form as said Master, subject to the orders of this court, shall direct; and

It is hereby further ordered that any contract-holder, or creditor or claimant of said Guaranty Company failing to file his claim against said Guaranty Company with said Master on or before the first day of September, 1909, shall be forever barred and excluded, except for good cause shown to this court, from participating in any way in the property, assets and funds of said Guaranty Company under the control or administration of this court. Said Mas-

ter is hereby directed to give public notice of the place of filing such claims and the time within which the same must be filed, by publishing such notice in a daily newspaper of general circulation, published in the City of Chicago at least once in each week for four successive weeks, the first publication thereof to be prior to the first day of June, 1909. Such notice shall advise the claimants that unless proofs of claim be filed with said Master on or before the first day of September, 1909, they will be excluded from participating in any way in the property, assets and funds of said Guaranty Company under the control or administration of this Court.

Said Master is further directed to mail a copy of such notice to each and every stockholder and creditor and claimant of said Guaranty Company, appearing as such on the books of said Guaranty Company. All proofs of claim filed with said Master by any
324 person holding a contract of said Guaranty Company, shall show the total amount paid to said Guaranty Company by said contract holder, taking into consideration all transactions with said Guaranty Company and the amounts of all loans and advances made by said Guaranty Company, upon such contract or otherwise, and the total dividends or other payments received thereon. Such proofs of claim shall state what, if any, prior or preferential right or demand said claimants assert in, to or against said property, assets and funds, and the proceeds thereof, or any part thereof, and what right, if any, said claimants assert to participate or share in any separate and distinct fund under the control or administration of this court. Such proofs of claim shall have attached thereto the contract upon which the claim is based (unless the contract has been heretofore delivered to said Guaranty Company, in which event the proof of claim shall so state). The proof of claim shall be upon a form to be prescribed by said Master, and shall contain such further information as said Master may require, said Master being hereby empowered to make such further rules and regulations in respect thereto, as to him shall seem right or proper. After the proofs of claim have been presented to said Master, as aforesaid, he shall pass upon the same and cause the same to be properly audited, and ascertain what part of said claims are correct and valid and determine what amounts shall be allowed thereon, and what priorities, preferences and equities if any, of participation in any separate fund shall be accorded said claimants, all in accordance with such rules with respect thereto as may hereafter be declared by the Master, or by the court, if application therefor shall be made to the court. As soon as convenient after the first day of Septem-
325 ber, 1909, said Master shall report to this court all claims allowed by him, and all claims disallowed by him, and his findings with reference to such priorities, preferences and equities, of any, and all his action hereunder with respect to each and every claim presented to and passed upon by him, together with such other matters as may be necessary to enable this court to obtain a correct understanding of his action in regard thereto. If in the judgment of the Master it will expedite the hearing of this cause by making

an earlier report or securing an earlier ruling of this court upon any claim or claims, or upon any matter or matters in connection with any claim or claims, said Master may, upon due notice to the parties in interest, present the same to this court for sooner determination. Said Master is authorized to appoint an accountant at a reasonable expense, and employ such clerical force and provide the necessary books, forms and stationery as to him may seem necessary for the proper consideration, audit, determination and disposition of all said claims and of all said matters pertaining thereto.

CHICAGO, *May* —, 1909.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, H. S. Stoddard, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the order entered in said cause on the 26th day of May, A. D. 1909, in the cause wherein Carrie Rebecca Furey et al. are the complainants and American Guaranty Company of Chicago is the defendant as the same appears from the original records and files thereof now remaining in my custody and control.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office in said District this 10th
326 day of June, A. D. 1909.

H. S. STODDARD, *Clerk*, [SEAL.]
By JOHN H. R. JAMAR, *Chief Deputy*.

"EXHIBIT E."

Notice to Contract Holders and All Other Persons Having Claims Against the American Guaranty Company of Chicago to File Proof of Claims with James S. Hopkins, Master in Chancery.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

No. 29336.

CARRIE REBECCA FUREY et al., Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Notice is hereby given, under and in accordance with an order entered May 26, 1909, by the Honorable C. C. Kohlsaat, one of the Judges of said United States Circuit Court, in the above entitled cause, that all contract holders and all other persons having claims against said American Guaranty Company of Chicago, shall, on or before the first day of September, 1909, file with the undersigned, James S. Hopkins, a Master in Chancery of said Court, at Room

925, No. 125 Monroe St. (American Trust Building) Chi-
327 cago, Illinois, a proof of claim upon a form prescribed by said Master in Chancery.

All proofs of claim filed with said Master by any person holding a contract of said Guaranty Company shall show the total amount paid to said Guaranty Company by said contract-holder, taking into consideration all transactions with said Guaranty Company, and the amounts of all loans and advances made by said Guaranty Company, upon such contract or otherwise, and the total dividends, or other payments received thereon. Such proofs of claim shall state what, if any, prior or preferential right or demand said claimants assert in, to or against the property, assets and funds, and the proceeds thereof, or any part thereof, of said American Guaranty Company of Chicago, and what right, if any, said claimants assert to participate or share in any separate and distinct fund under the control or administration of said Court. Such proofs of claim shall have attached thereto the contract upon which the claim is based (unless the contract has heretofore been delivered to said Guaranty Company, in which event the proof of claim shall so state).

Any contract-holder or creditor or claimant of said Guaranty Company who shall fail to file his claim against said Guaranty Company with said Master, on or before the first day of September, 1909, will be excluded from participating in any way in the property, assets and funds of said Guaranty Company under the control or administration of said Court.

JAMES S. HOPKINS,
Master in Chancery.

Chicago, May 29, 1909.

MAYER, MEYER & AUSTRIAN,
Counsel for Receiver of American Guaranty Company of Chicago.

328 "EXHIBIT F."

(Form of proof of claim prescribed by the Master in Chancery under and in accordance with an order of the United States Circuit Court for the Northern District of Illinois, Eastern Division, entered May 26, 1909, in Furey et al. v. American Guaranty Company of Chicago, Case No. 29,336. A separate proof of claim should be filled out for each contract.)

Proof of Claim Against American Guaranty Company of Chicago.

STATE OF ——,
County of ——:

To James S. Hopkins, Master in Chancery of the United States Circuit Court, Northern District of Illinois, Eastern Division, Room 925, American Trust Building, 125 Monroe Street, Chicago, Illinois:

I, —— ——, do reside at No. —, in the city of ——, State of ——, and do herewith present and file this, my claim, against

the American Guaranty Company of Chicago, under and in accordance with the order entered on May 26, 1909, by the United States Circuit Court, for the Northern District of Illinois, Eastern Division in Furey et al. v. American Guaranty Company of Chicago, Case No. 29336, and pray for the allowance thereof.

I am the owner and holder of the following described contract issued by said American Guaranty Company of Chicago:

329

Kind of contract. (Here state kind of contract, whether income contract, service contract, investment contract, etc.)	Contract number.	Date of issue of contract.	Amount of contract.	Amount of each installment and when payable (whether monthly, quarterly, etc.)

Said contract No. ..... was issued in the name of ....., of ....., State of .....

	Leave this column blank.
There has been paid on said contract to said American Guaranty Company, from the date of issuance of said contract, this total sum of.....	$.....
The last payment on said contract was made on — and was	$.....
The cash surrender value of said contract on Feb. 1, 1909, according to the terms thereof was.....	$.....
There has been loaned or advanced on said contract, or otherwise, to me by said American Guaranty Company, the total amount of.....	$.....
Interest on said loans and advances has been paid by me up to the — day of ——, 190–.	
There has been received on said contract from said American Guaranty Company, as dividends or other payments, the total amount of.....	$.....

330 I do claim a prior or preferential right or demand against do not the property, assets and funds of said American Guaranty Company, as follows:

.....

.....

.....

.....

I do / do not claim a right to participate or share in the separate and distinct fund under the control and administration of said Court, as follows:

.....

.....

.....

for the following reasons:

.....

.....

.....

.....

If the claimant is an assignee of the original contract-holder he will here state the full particulars of the assignment, as it appears from the contract and if the assignment is by separate instrument, the instrument of assignment should be attached hereto.

.....

.....

I herewith attach and make a part of this claim, said contract No. ..... of said American Guaranty Company of Chicago.

If said contract has been heretofore delivered to said Guaranty Company, state when and why it was so delivered:

.....

.....

331 There is now due and owing to me on said contract the sum of $....., over and above all just claims, deductions and set-offs. I respectfully pray that my said claim be allowed for said sum, and that I be allowed and decreed such preferences, priorities, and equities, and such participation in the separate and distinct fund held by the Receiver herein, and such proportionate share of all the property, assets, and funds of said American Guaranty Company, as under all the facts and circumstances shall be just and equitable in the premises.

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.....

Affidavit.

STATE OF ——,
County of ——, *ss:*

—— ——, being first duly sworn, upon oath deposes and says that the above and foregoing proof of claim by him subscribed, is true.

—— ——.

Subscribed and sworn to before me, a Notary Public, this —— day of ——, 1909.

—— ——,
Notary Public in and for the County of ——, *State of* ——.

Mayer, Meyer & Austrian, Chicago, Illinois, Counsel for Receiver of the American Guaranty Company of Chicago.

332 (Endorsement on back:) Claim No. —. Proof of Claim against American Guaranty Company of Chicago. —— ——, Claimant. Residence ——, State ——. Contract No. —. Filed —— —, 1909. —— ——, Master in Chancery.

333 And at another day, to-wit:

At a Circuit Court for Kanawha County, Held at the Court House Thereof, on the 22nd Day of September, 1909.

In Equity. No. 2019½.

CARRIE REBECCA FUREY & Others
vs.
AMERICAN GUARANTY COMPANY & Others.

W. R. Gilliam, on behalf of himself and other contract holders of the defendant American Guaranty Company, having appeared in this Court on the 20th day of September, 1909, by F. W. Houghton, George B. Edgerton and Chilton, MacCorkle & Chilton, his attorneys, and asked leave to file his petition herein, praying among other things to be made a party defendant in this cause and to be permitted to answer the same, and the filing of said petition having been then resisted by Brown, Jackson & Knight, representing the plaintiffs, the matters arising upon the filing of said petition were argued on said 20th day of September, on the 21st of September and on this date; and now the Court having heard all the arguments of counsel and *and* being fully advised in the premises, doth grant the leave to file the said petition and the same is accordingly filed, to which action and ruling of the court the plaintiffs objected and excepted; and thereupon the said plaintiffs asked the Court for time to answer said petition before the Court would proceed to act thereon, which application for time the said petitioner opposed, and the

Court decided that it was not proper at this time to delay the rene. hereinafter granted in this order, and to that extent refused to allow the plaintiffs time to oppose such relief by answer, to which ruling of the Court the plaintiffs objected and excepted; and thereupon it is ordered that the said Gilliam and the eighty-six other contract holders named in his petition be made parties defendant
334 herein and are permitted to answer the bill or to file a cross-bill, or to take such other steps herein to protect their interests as they may be advised; and all other contract holders of said American Guaranty Company are given leave to intervene herein; and at the time the said application to file said petition was made, to-wit, on said 20th day of September, 1909, and now, the said Gilliam also moved the Court to discharge the Receiver herein, V. L. Black, heretofore appointed as Receiver of the said American Guaranty Company, for the reasons set forth in said petition, which reasons are not meant to, and do not reflect upon the character or personal integrity of said Black, and at the same time and now also moved the Court to enlarge the jurisdiction of the Receiver of this Court, as prayed for in said petition, and moved the Court then and now to empower the Receiver of this Court to take possession, control and management of all the funds, property and assets of the defendant, American Guaranty Company, whether the same be situated in this state or in any other state or territory, and then, and now, further move the Court to appoint a Receiver that stands entirely disinterested as to all of the parties to this cause, in the room and stead of said V. L. Black, all which motions were opposed by the plaintiffs; and the Court having heard fully the arguments of counsel upon each and all of said motions, and being ready to decide each and all of said motions on this day,

It is, therefore, adjudged, ordered and decreed that V. L. Black, who was, by a decree entered in this cause on the first day of February, 1909, appointed Receiver of the defendant, American Guaranty Company, be, and he is hereby discharged as such Receiver, and that Edwin M. Keatley is hereby appointed Receiver of the said American Guaranty Company to take custody, possession and control of all and singular the property and assets of the said American Guaranty Company wherever the same may be situated or locatd, whether in this state or in some other state or ter-
335 ritory, and hold the same subject to the provisions of the statutes of West Virginia, under the orders of this Court, and to the payment of the liabilities of the corporation and the expenses of winding up its affairs, and the surplus, if any, to distribute among the stockholders of the said American Guaranty Company according to their respective interests as the Court may hereafter direct; and the said Receiver is hereby given power and authority to institute and prosecute to final judgment and decree any and all needful actions at law, suits in equity or other proceedings which may be necessary to bring under his jurisdiction and bring into his possession, custody and control any of said property and assets wherever the same may be found; and,

He shall have further power and authority to file any proper

petition, demurrer, answer or other pleading, or make such motions as may be necessary in any suit now pending in any state or territory or which may hereafter be instituted in any state or territory, concerning the business, property or assets of said American Guaranty Company, for the purpose of bringing under his possession, control and custody all of the said property and assets and to this end and for the purpose of instituting any such suits or actions for filing any such pleadings and the making of any such motions or interventions, the said Receiver is authorized to employ counsel in this state or in any other state or territory in which any of such property may be situated, if the title and claim of the said Receiver thereto shall be in any way contested or obstructed, and he shall, from time to time, report his proceedings hereunder, to the Court; and

The defendant, American Guaranty Company, under the provisions of Section 59 of Chapter 53 of the Code of West Virginia, is hereby ordered and directed to make, execute and deliver an apt and proper deed, conveyance, transfer or assignment convey-
336 ing to the said Receiver this day appointed, all of the property and assets of said American Guaranty Company, wherever the same may be situate. And all of the stockholders, creditors, contract holders and all of the parties to this cause are hereby restrained, inhibited and enjoined from interfering with the said Receiver in any way in the discharge of the duties required of him hereunder, and from hindering, delaying or obstructing the said Receiver in the discharge of his duties hereunder, and from hindering, delaying or obstructing the said Receiver in the recovery of the possession and control of all of said property and assets of the said American Guaranty Company wherever the same may be situated; but it shall not be deemed a violation of this injunction to prosecute any suit now pending in any other court or to appear in, defend or take proper legal proceedings in any such other suit now pending. But before taking any property or assets into his possession or control under this decree, or acting hereunder, the said Receiver shall execute a bond in the penalty of Two Hundred and Fifty Thousand Dollars, with security to be approved by this Court, conditioned that the said Receiver will faithfully discharge his duties as such Receiver and will faithfully account for and pay over all property and assets which may come into his hands as such Receiver.

During the argument of this cause the counsel for the petitioner, W. R. Gilliam, asked leave to amend the said petition as follows, to wit: At the bottom of page fifteen and the top of page sixteen, that the sentence which reads as follows:

"And said receiver has taken possession and assumed control of all of the assets and property of said American Guaranty Company, and has applied for the payment to him by said Royal Trust Company, Trustee, of the aforesaid trust fund, which it holds as security for the payment of outstanding contracts, and, if per-
337 mitted, will, pursuant to the designs and plans of said conspirators, and in their interests, administer, under their di-

rection and that of their attorneys, all of said property and assets to the detriment and irreparable loss of your petitioner and other creditors and the contract holders of said defendant corporation", shall be amended so as to read as follows:

"And said Receiver has taken possession and assumed control of all of said assets and property of said American Guaranty Company, and has applied for the payment to him by said Royal Trust Company, Trustee of the aforesaid trust fund, which it holds as security for the payment of outstanding contracts, and, if permitted, will administer all of said property and assets not so fully and equitably as could be done in this Court and to the detriment and irreparable loss of your petitioner and other creditors and the contract holders of said defendant corporation"; and

Counsel requested that this order should show that counsel stated that the purpose and object of making said amendment was that they feared that in the hands of opposing counsel it might be contended that the language so used would reflect upon the Circuit Court of the Northern District of Chicago, or some of the judges thereof, and that such was not the intention or purpose of the original allegation, and that they did not desire to use any language which could be in any way so construed; and there being no objection to such amendment the said petition was amended accordingly, and before argument was concluded.

In the event that the American Guaranty Company shall fail to file with the papers in this cause, within fifteen (15) days from this date, an apt and proper deed, conveyance, transfer or assignment, conveying to the Receiver this day appointed, all of the property and assets of said American Guaranty Company, wherever the same may be situated, then that T. S. Clark, who is hereby appointed a special commissioner for that purpose, shall make,
338 execute, acknowledge and deliver for record for and on behalf of the said American Guaranty Company, an apt and proper deed, conveyance, transfer or assignment, conveying to the said Receiver this day appointed, all of the property and assets of said American Guaranty Company, wherever the same may be situated, but before making any such deed said special commissioner shall submit the same to the Court for approval, after giving local counsel for plaintiffs reasonable notice thereof.

And the Court gives leave to the plaintiffs if they so desire to plead, answer or demur to the said petition of W. R. Gilliam, at any time on or before 30 days from this date.

And the plaintiffs object and except to all the foregoing relief granted by this decree on the said petition of W. R. Gilliam.

339 (Petition referred to in the foregoing order, is in the words and figures following, to-wit:)

In the Circuit Court of Kanawha County, West Virginia.

The petition of W. R. Gilliam on behalf of himself and other contract holders and creditors of the American Guaranty Company, filed in the case of Carrie Rebecca Furey, executrix and others against the American Guaranty Company, pending in said court.

To the Honorable S. C. Burdett, Judge of said court:

Your undersigned petitioner would respectfully represent:

That the above named defendant, The American Guaranty Company of Chicago, was duly created, incorporated and organized under the laws of this state, receiving and accepting a due and proper certificate of such incorporation, bearing date the 18th day of July, A. D. 1892, under the corporate name of the American Investment Guaranty Company, with an authorized capital stock of $200,000, and with authority to increase the same to $1,000,000. That said corporation by due proceedings lawfully amended its said original Articles of Incorporation, whereby its name was duly changed on or about January 12, 1898, to the American Guaranty Company and thereafter and on or about the 13th day of April, A. D. 1901, by proper proceedings duly taken under the
340 laws of this state, the said defendant lawfully fixed its said capital stock at the sum of Five Hundred Thousand ($500,000.) Dollars, consisting of five thousand shares of the par value of one hundred dollars each, and so the same has since remained. That the charter of said defendant to be a corporation was limited by its Articles, and the Certificate of Incorporation, to July 1st, A. D. 1942, and among its objects and powers at its creation, it was authorized and empowered to enter into, make, execute and deliver, certain contracts known as investment, service and income contracts, wherein and whereby, for certain specified stated payments under express conditions therein contained, incomes, annuities and other payments were guaranteed to the holders of such contracts, as specified and various maturities.

That the principal administrative offices of said defendant company, have always been in the City of Chicago, in the State of Illinois, and upon information and belief, that all the officers and stockholders of said defendant have continuously resided at and have always done business for said company from said City of Chicago. That the transactions of said defendant have largely, if not wholly, been carried on, and its business has been built up and maintained, upon an extraordinarily profitable basis, through the efforts and by reason of the personal attention of a large number of state and district agents throughout the United States, said Agents receiving as compensation, an agreed percentage of the periodical premiums or specified payments from the holders of the various contracts issued by said defendant company. Many of such
341 agents, and among them your petitioner, also by contract to receive such percentages upon all future payments of premiums or renewals, as the same are generally termed in said business.

And your petitioner doth further show and aver the fact to be that he is the owner and holder of five written contracts issued by the said defendant company, to-wit: One Five Thousand Dollar ($5,000.00), fifteen year income contract; two Two Thousand Dollar ($2,000.00) fifteen year income contracts; one One Thousand Dollar ($1,000.00), ten year income contract, and a one-half interest in a Five Thousand Dollar ($5,000.00), twenty year contract. That the said defendant company at the time of its dissolution had knowledge of and had full account upon its books of each and every of said contracts and of this petitioner's interest therein. That neither of said four contracts so owned by this petitioner individually, nor the Five Thousand Dollar contract in which he has a half interest, has yet matured. That this petitioner also represents and is duly authorized to represent eighty-six other contract holders, of the aggregate amount maturity value of more than Four Hundred and Fifty Thousand Dollars ($450,000.00). That the names of the said eighty-six contract holders, with the amount of the maturity value of each of said contracts are set forth in Exhibit B. hereto annexed and made part of this petition, the same as though set forth at length herein.

That this petitioner is also a creditor of the said defendant corporation in the sum and amount of Forty-nine Thousand Six Hundred and Eighty-two Dollars ($49,682.00) because of his
342 right and interest in renewal commissions agreed to be paid to him by said American Guaranty Company as hereinafter set forth on sixty-four service and gold bond contracts One Thousand and Forty-two Dollars ($1,042.00) and renewal commissions on one thousand four hundred and forty-four — ($1,444) ten and fifteen year income contracts.

That from January 1, 1903, all the time until December 26, 1908, this petitioner was a co-partner of one F. L. Morgan at St. Paul, Minn., doing business under the name and style of F. L. Morgan & Company for the first three years and until about January 1st, 1907, and thereafter under the firm name and style of Morgan & Gilliam. That such co-partners were from the first day of May, 1903, until the 15th day of June, 1907, general agents of the American Guaranty Company of Chicago, for the State of Minnesota, and from the 15th day of June, 1907, until the 31st day of December, 1908, the district managers of the American Guaranty Company for the State of Minnesota for the sale of such contracts as were issued by the American Guaranty Company of Chicago. That the said co-partners were such general agents and managers of the American Guaranty Company for the state of Minnesota under and by virtue of four certain written contracts made and entered into between the said American Guaranty Company of Chicago and the said co-partners. That the said several contracts were made on the following dates, to-wit: the 15th day of August, 1903, the 27th day of December, 1904, the 26th day of December, 1906, and the 15th day of June, 1907, respectively. That the said contracts were made in duplicate and the said defendant, the

American Guaranty Company, has a duplicate of each of
343 said several contracts. That by the terms of said contracts, and each of them, a certain amount stipulated therein was to be paid and was paid to the firm of F. L. Morgan & Company and the firm of Morgan & Gilliam at the time said contracts were sold reported to the said American Guaranty Company by said co-partners. That it was provided in each of the said contracts that in the event of the death of either of the members of the firm of Morgan & Gilliam or F. L. Morgan & Company, all benefits and rights under said contract should revert to the survivor. That the said F. L. Morgan died on December 26th, 1908, and thereupon this petitioner, as the survivor succeeded to all the rights under and by virtue of said several contracts. That in each of such written contracts it was further provided, that in addition to such compensation the said Morgan & Gilliam and F. L. Morgan & Company should receive a renewal commission of Two Dollars ($2.00) per thousand maturity value upon all service contracts, also One Dollar ($1.00) per thousand upon all income contracts out of the second and each subsequent full year's payment made in cash. That in the contract of the 15th of June, 1907, it is also provided that the renewals so provided in such contract should apply to all business secured under any previous contracts between the said American Guaranty Company and the said Morgan & Gilliam. That at the time the decree of dissolution was entered herein, to-wit, on the 1st day of February, 1909, this petitioner was entitled to renewal commissions on sixty-four service and gold bond contracts then outstanding and not matured, which commission
344 amounted in the aggregate to One Thousand and Forty-two Dollars ($1,042.00) and this petitioner was at such time by virtue of said contracts so made and entered into with the said American Guaranty Company, entitled to renewal commissions under one thousand four hundred and forty-four (1,444) ten and fifteen year income contracts and other contracts issued by such company, the sum and amount of Forty-eight Thousand Six Hundred and Forty Dollars, ($48,640.00). That because of the voluntary suit brought by the plaintiffs herein, resulting in the decree of dissolution herein, the said sixty-four service and gold bond contract holders and the said one thousand four hundred and forty-four ten and fifteen year income contract holders were thereby prevented from paying their renewal commissions. That this petitioner states and avers on information and belief, that each and every of the said sixty-four service and gold bond contract holders and each of the one thousand four hundred and forty-four ten and fifteen year income contract holders would have continued to pay and would have paid each and every of said renewal premiums had the said American Guaranty Company continued as such corporation and performed its agreement as under such contracts it agreed to do. Of all of which facts the said defendant company had full knowledge at the time of its dissolution.

That the aggregate maturity value of the several contracts sold and secured to the said defendant company through the efforts of

the said co-partners as such general agents and district managers was three million eight hundred forty-six thousand dollars ($3,846,000.00).

That because of the premises and the acts of the plaintiffs herein this petitioner is a creditor of such corporation for services rendered under said several written contracts and for moneys expended, the sum aforesaid, to-wit; the sum of Forty-nine Thousand Six Hundred and Eighty-two Dollars ($49,682.00).

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That the contracts so as aforesaid issued by said defendant were made to require periodical payments of premiums extending over a term of years, usually ten, fifteen, twenty or twenty-five years, and, conditioned upon the faithful and continued payments, the said defendant company undertook, agreed and guaranteed to pay or cause to be paid to said contract holders or their heirs and assigns, certain annuities or incomes, at and after the expiration of such premium paying periods, the contract thereby being kept alive and being intended to cover a long period of years, and that the rights of both parties should continue under said contracts in many, if not all instances, beyond the usual expectation of life of said contract holders. That by the very nature of the said transactions, constituting as aforesaid all the actual business of said defendant company, it was intended and as your petitioner is advised and believes, it was implied in every such contract, that said defendant company would continue in business and conserve and protect its assets until all its agreements or obligations thereby assumed, should have been fully discharged, or should have been duly transferred and fully protected by assignment to some other amply able and lawfully constituted person or corporation, to execute and completely fulfil, and that the contracts and agreements with your petitioner and other agents similarly circumstanced, should be fully provided for and protected.

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And your petitioner further shows, upon information and belief, that although at one time after the organization of said defendant company, its said capital stock amounted to $1,000,000, face value, and was by the action of its stockholders duly reduced to a face value of $500,000., yet that there had never been sold or issued, and there was at no time outstanding, more than 962 shares aggregating a face or par value of $96,000.; but whether the same or any portion thereof had ever been paid for at par as required by the laws of this State, or in any way whatsoever, your petitioner is not advised.

That, upon information and belief, one Charles L. Furey, in or about January, 1899, became Vice-President of said defendant company and a large stockholder therein, and since about July, 1903, by a resolution of the Board of Directors of said defendant company, the said Furey, who then claimed to be the owner and holder of the large majority of the outstanding stock of said defendant company, caused himself to be directed, as such Vice-President, to assume and control and conduct the entire business of said defendant company and to become chairman of its Board of Directors; and that thereafter and up to the time of his death, about November 29th, 1908, said Furey entirely controlled and dominated and directed the business of said defendant company to its very details, and the other officers and

members of the Board of Directors, became his representatives and merely dummy, or straw directors, carrying out entirely the plans and policies dictated by said Furey.

That the business of said defendant has grown, by the zeal and industry of the agents selected and entrusted with the conduct
347 of its business of issuing contracts as aforesaid, to very large proportions, and, upon information and belief, states that on December 15th, 1908, the said defendant company had in force outstanding, valid contracts and obligations of said company to the face value of over Fifteen Million ($15,000,000.00) Dollars, and constituting about 6500 of such contracts of all classes, among which are the contracts of your petitioner, and those he represents herein.

That by the terms of said contracts, a surrender value, so called, is given progressively upon and to each thereof, as well as a loan value, being the amount the defendant company would advance thereon varying, of course, from time to time before maturity, and so long as the same was kept alive, and that at the date last aforesaid, your petitioner estimates the surrender value of all of said contracts, that is, the sum which said defendant company could be called upon to pay in liquidation of the aforesaid outstanding contracts, would be in excess of One Million Dollars ($1,000,000.00). That said defendant company, by the terms of said contracts, was required at all times to keep upon deposit with a selected trust company, viz.—The Royal Trust Company, at Chicago, Illinois, a sum of money or convertible securities, the equivalent of not less than 75% of the cash surrender value of all of said policies from time to time in force, and as your petitioner is advised and believes, in June 1908, said defendant company had so on deposit with said Trust Company, in excess of Five Hundred and Fifty Thousand Dollars, as above provided. That on said December 15th, 1908, as your petitioner is informed and believes, the said defendant company, was wholly solvent, and
348 had, owned and possessed a large amount of assets properly and largely constituting a fund for the full protection and conversion and liquidation of said contracts as they might require, and for the payment of sums due and to become due to your petitioner and others similarly situated, as well as other creditors, and to the stockholders of said company, exceeding the sum of One Million Dollars. That for some years before his death, November, 29th, 1908, said Furey had become the owner of, and was holding and exercising ownership of 602 shares, and Lewis W. Pitcher, for some years and then the Secretary of said Company, held on the books, and claimed to own, 260 shares, and James L. Bigelow, then and for years the Treasurer of said company, held on the books and claimed to own 100 shares of capital stock of said company, constituting the entire outstanding capital stock of the defendant, of 962 shares. That during several years previously, and then Frederick M. Steele, of Chicago, Illinois, was President of said Company, and including the four persons named above, the following persons constituted the Board of Directors of said Company, to-wit: Frederick M. Steele, Lewis W. Pitcher, James L. Bigelow, William George, William B. Hill, Byron M. Fellows, Frank Backus, John T. Powers.

That none of said persons above named, constituting the officers and directors of said defendant company, except the said Furey, Pitcher and Bigelow, owned or held any of the stock of said company, or were qualified to be, or ever were, legally members of such board. That the stock of said Pitcher and said Bigelow, were pledged to and held by said defendant company, as collateral to loans made to said parties respectively about March, 1906.

And your petitioner further shows unto your Honor, that said Furey departed this life on or about November 29th, 1908, and willed and devised all his stock in said defendant company to his wife Carrie Rebecca Furey, and his minor daughter, Caroline L. Furey, and as your petitioner is advised, probate proceedings have been duly had to confirm title thereto in said last named persons. That on and before the 1st day of February, A. D. 1909, the said Carrie R. Furey and Caroline L. Furey, so being the holders and claiming to own the aforesaid 602 shares of the capital stock of said defendant company, being more than sixty (60) per cent of the entire outstanding capital of said defendant company, conspired and confederated together and with said W. L. Pitcher and J. L. Biglow, claiming to own the rest of said issued capital stock, and with the said defendant company, and said Frederick M. Steele, the president thereof, and with divers other persons whose names are to your petitioner now unknown, but when discovered, your petitioner prays leave to here insert, and in fraud of the rights of your petitioner and other agents and creditors of said defendant company, and with intent and purpose to secure possession and control of all the property and assets of said defendant company, to the end that thereby and by and through the dissolution of said corporation and the abandonment of its said business, the surrender and cancellation of said outstanding contracts, might be enforced upon said contract holders and greatly diminished in value below their fair cash and guaranteed value, while said corporation was still a prosperous growing concern, adding greatly each year to its earnings power and the stability and value of its contracts and obligations, and that when so surrendered and commuted at for less than an otherwise fair value, the indebtedness to your petitioner and others, accruing from renewals and future payments, might be likewise discounted or altogether avoided, and then the large assets and valuable holdings of said defendant company, might be paid to the said alleged stockholders and the others conspiring with them as aforesaid. That pursuant to such conspiracy and confederation, the said Carrie R. Furey, and Caroline L. Furey, Frederick M. Steele, W. L. Pitcher, J. L. Bigelow, and other unknown persons aforesaid, appeared in this Honorable Court, and by a bill signed and verified by said Fureys and by a collusive joinder in said petition for and signed by said Pitcher and said Bigelow, and a consent answer purporting to be signed by said Steele, as President, and said Pitcher as Secretary of and for said defendant company, consenting to the entry of the decree of dissolution asked for in said petition, setting up as the sole and only equitable ground therefor,

the inability of said Carrie R. Furey and Caroline L. Furey to continue the conduct of the business of said defendant company themselves, and their inability to procure the services of a competent person so to do, and alleging the peculiar and sole fitness for such business of said Charles L. Furey, deceased, prayed in and by said bill for an order of this Honorable Court in Equity, decreeing and adjudging the dissolution of said American Guaranty Company of Chicago, a corporation under the laws of this State, and having its principal office therein, and to make such orders and award such injunctions in the case, as justice and equity may require; and appoint one or more persons to be receivers and take charge of and administer the assets of said company, and grant such other and appropriate relief as may be proper in the premises. That in and by said petition or bill in equity, it was expressly alleged and verified by the said petitioners "that other than its obligations on said contracts, said Guaranty Company has no liability whatever, except to a nominal amount for current expenses, and except what may be owing for commissions to said Charles La Tour Furey and agents; that said Guaranty Company has no liability of any kind in the State of West Virginia, other than to 48 contract holders, none of whose contracts has matured, and upon none of which is said Guaranty Company in any way in default; and the total surrender or cash value of which does not exceed $9751.44; that all of the property and effects of said Guaranty Company, are in said City of Chicago, except a few cash balances and the little more than nominal amounts due to said Guaranty Company from about fifteen banks outside of Chicago, which have been the collecting agents of said Guaranty Company." That the joinder of said Pitcher and said Bigelow in said petition, and the consent answer of said corporation, were all presented with said bill to this Honorable Court, and such proceedings were thereupon immediately had without notice to any other persons who might be interested therein, and proper or necessary parties thereto, that a decree of the dissolution of said American Guaranty Company of Chicago, was instanter declared, and only V. L. Black, of Charleston, West Virginia, was appointed Receiver of all of the property and assets of said *defendant company within the jurisdiction of this Court to have and to hold and administer under the orders and direction of this Court.* That said decree further expressly provided, *All the creditors of said American Guaranty Company, are hereby enjoined from interfering or meddling with any of the property of said American Guaranty Company.*" And said Receiver was required to, and at once did, give bond as required in said decree.

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Your petitioner now makes the records of this Court in said action for dissolution of said defendant company, a part of this petition as fully as if set out at length herein.

And your petitioner further shows unto Your Honor: That by virtue of said judgment and decree of dissolution and the appointment and qualification of said receiver, the corporate existence and power of action as such corporation defendant was thereby forever ended and annulled, under and by virtue of the provisions of the

statutes of this state, and all and every action taken or to be taken by or against such former corporation, must thereafter be by or against said defendant Receiver Black in, or, otherwise, by the favor and permission of this Court. And that said injunctional order so incorporated in such decree, was and is effective to prevent action by any creditor or officer or stockholder of said defendant corporation from proceeding in any action at law or in equity in any other jurisdiction than this Honorable Court, except by and with the previous consent and permission of your Honorable Court duly had and obtained.

And your petitioner further shows unto your Honor: that notwithstanding the proceedings aforesaid in this Honorable
353 Court, and the said decree of dissolution and said appointment of said receiver, and said injunctional order, all so as aforesaid dictated and procured by said conspirators in furtherance of their said conspiracy, the said Carrie R. Furey and said Caroline L. Furey, in contempt and in violation of said decree and injunction aforesaid, and in pursuance of and to carry out the aforesaid conspiracy, and well knowing and having procured said decree and order in this Court, appeared by attorneys and duly filed in the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois, in Equity sitting, at Chicago, in said district, upon the day following the entry of the decree aforesaid, in the said action for dissolution in this Honorable Court, to-wit, upon the 2nd day of February, A. D. 1909, their verified bill in equity against said American Guaranty Company of Chicago, as the sole defendant therein, setting up the diverse citizenship of said complainants, residents and citizens of Illinois, and said defendant, resident and citizen of this state, the appointment and qualification of said Carrie R. Furey, as Executrix of said Charles L. Furey, deceased, the heirship of herself and said other complainant under said will; the ownership of said stock by deceased, the alleged indebtedness of said defendant corporation to said deceased in his lifetime for commissions, a part of the history of said defendant corporation, and its business transactions, outstanding contracts, liabilities, assets and property, the growth of the business under the management of said deceased, and the unwillingness of said three stockholders to continue the corporation business, the freedom of defendant corporation from liability or indebtedness beyond its contracts, except to
said estate and possible agents for commissions, the filing of
354 the bill for dissolution, and the action therein as aforesaid in this honorable Court, including its dissolution, and attaching copies of all such records and proceedings as exhibits to said Illinois bill; alleging further that in consequence of said decree, the said corporation has become trustee for its creditors and stockholders, and the receiver of this Court has no jurisdiction or authority beyond this state, that all assets substantially are within the jurisdiction of said Federal Court; that they believe some of the contract holders contemplate attachment and other proceedings and will make levy on the assets of the corporation, creating priorities and expensive and voluminous litigation, wasting and destroying the

assets so as to make the same utterly inadequate and insufficient unless taken over by a receiver and administered, and praying the intervention of said Court and the appointment of a receiver to wind up the affairs of said defendant corporation. That at once and at the same time, the defendant corporation appeared by its attorneys, and filed its answer, confessing said bill and joining the prayer for a receiver, and the said Court immediately took jurisdiction and entered its order, appointing Edwin A. Potter of Chicago, Illinois, as receiver of all of the property and assets of said defendant corporation wherever situate, with complete power over the same, enjoining all creditors and contract holders of the company from intermeddling by suit or otherwise, and requiring bond, which was immediately furnished and approved in the same order. And said receiver has taken possession and assumed control of all of the assets and property of said American Guaranty Company and has applied for the payment to him by said Royal Trust Company, Trustee, of the aforesaid trust fund, which it holds as security for the payment of the outstanding contracts, and, if permitted will, pursuant
355 to the designs and plans of said conspirators, and in their interests, administer under their direction and that of their attorneys, all of said property and assets to the detriment and irreparable loss of your petitioner and other creditors and the contract holders of said defendant corporation. That a true copy of said bill, answer and order appointing receiver in said action in said Federal Court, are identified as Exhibit "A," and made part hereof; the exhibits with said bill, however, being the same as those filed with the bill in this Court, are not filed with said Exhibit "A."

And your petitioner further shows unto your Honor, that he is advised by counsel, and verily believes, that jurisdiction and control over all the assets and property of said defendant corporation, the American Guaranty Company of Chicago, wherever situate, is, by reason of said decree of dissolution and the procedure antecedent thereto, exclusively vested and resides in this Honorable Court, to the exclusion of all other courts whatsoever, and that as to such property and assets without the boundaries of this state, this Honorable Court should and will proceed to take possession thereof and entirely administer and apply and distribute as the equity of the case shall require, through ancillary proceedings wherever necessary. That the said receiver so appointed by this Honorable Court, is the only person now competent to take over any of the assets or property of said corporation, if and whenever the same shall be within the boundaries of this state, and that as to such property, and assets beyond this state, further action should and will be taken by proper application to this Honorable Court. That by said decree of dissolution, the said defendant corporation has ceased to exist as such and does not continue for the purpose of winding up its
356 affairs, nor are its present officers competent to act in any way, for or on its behalf, nor is it capable of suing or being sued, for the reason that the appointment of such receiver under the laws of this state, displaces and annuls the powers of said cor-

poration and its officers in toto, and subjects all its acts and powers to the discretion alone of this Honorable Court,

That, therefore, by reason of the premises, said Carrie R. Furey and said Caroline L. Furey, were in contempt of the injunctional order of this Court, in attempting to bring their said bill against said corporation defendant in said Federal Court in Illinois, as was also said defendant therein and the officers thereof, in answering said Bill and consenting to said order of appointment of said Potter as receiver of said Federal Court, and that furthermore, said Federal Court did not acquire, never has had and has not now, jurisdiction of either the said corporation defendant, or of the subject matter of said action, and that all action taken in said cause, are coram non judice and irregular, and that any further action therein, will, as has action already taken, jeopardize the rights of all stockholders, contract holders and creditors of said defendant corporation, and result in irremediable injury and damage to your petitioner and others similarly situated.

Your petitioner further alleges that the G. S. Couch, Jr., who sues as next friend of the infant in this cause, pending in this Court, is a member of the firm of Brown, Jackson, & Knight who are counsel for the plaintiffs in this suit, and who signed the bill herein, and that Angus W. McDonald, who appeared herein for the American Guaranty Company, the defendant, is also a member of said firm of Brown, Jackson & Knight, and that the said V. L. Black, who was by this Honorable Court appointed Receiver of said American
357 Guaranty Company, is also a member of said firm of Brown, Jackson & Knight, and that the surety on the bond of the said V. L. Black, as Receiver herein, is J. F. Brown, a member of said firm of Brown, Jackson & Knight. That your petitioner does not mean by the foregoing allegations to question the integrity of any of said counsel or of the said Receiver in the part which they have taken in these proceedings, as your petitioner views their said action, in the premises as having been done in good faith upon representations of their respective clients, but your petitioner does object and protest that a receiver in this kind of a case should be selected or nominated by those, who, according to the belief of your petitioner, are engaging in proceedings which will result in taking a trust fund from those clearly entitled to it, and in this connection your petitioner calls the attention of the court to the fact disclosed by the bill and the record herein, that the whole amount of the capital stock of the said American Guaranty Company, which has been issued, even if the same had been paid for in cash at par, (of which fact your petitioner has no knowledge), the same would amount to only ninety-six thousand two hundred dollars, ($96,200.00) whereas, the record in this cause shows, as will be seen by reference to the bill filed in this cause, and the bill filed in the Federal Court in Illinois, hereinbefore referred to, that the assets of the said American Guaranty Company amount to many times the said sum; and it further appears by the report of the Receiver of the

said Illinois Court, filed in said cause in Illinois, that the property and assets of the said American Guaranty Company are as follows:

358 Assets.

		Special fund.	General fund.
Cash and in banks		$269,801.37	$118,215.19
Real estate loans		46,750.00	73,642.00
Bonds		249,340.00	
Accounts Receivable		.....	56,717.36
Bills Receivable:			
General	$155,348.48		
Pearce & Sisson notes	2,327.94		
			157,676.42
Bank stocks		.....	2,000.00
Instalment loans		.....	3,508.43
		$565,891.37	$411,759.40
Loans on Contracts		.....	431,583.30
		$565,891.37	$843,342.70

	Total.
Cash in banks	$388,016.56
Real estate loans	120,392.00
Bonds	249,340.00
Accounts receivable	56,717.36
Bills receivable:	
General	
Pearce & Sisson notes	157,676.42
Bank stocks	2,000.00
Instalment loans	3,508.43
	$977,650.77
Loans on Contracts	431,583.30
	$1,409,234.07; and

Your petitioner now charges that the funds and assets of said defendant company constitute a trust of the highest character, for the reason that it is not the capital stock of the said corporation and the earnings of said capital stock by investment or otherwise that has created the said assets and funds to be administered by this or some other Court for the benefit of the contract holders of the said corporation, but on the contrary, said assets and funds have been made up almost if not entirely, from moneys paid into the said corporation by the said contract holders, under the terms of the said contracts and the real interested parties in any proceeding to dissolve or wind up the said American Guaranty Company are the said contract holders, of which your petitioner, and those on whose behalf he now

intervenes in this Court, constitute a considerable part, to-
359 wit, at least Four Hundred and Fifty Thousand Dollars ($450,000.00) in maturity value out of a total of approximately fifteen million dollars, ($15,000,000.00).

Your petitioner believes and charges that the creditors' claim set up by the plaintiffs in the said bill in the State of Illinois, hereinbefore referred to, is not a just one, and that the same, if properly defended and contested would not be allowed by a Court of Equity; and your petitioner is further advised and so charges that neither the American Guaranty Company nor the Receiver in Illinois have contested the said claim, and under the terms of the appointment of the Receiver of this Court the latter could not make such contest or defense.

Your petitioner now alleges that the authority for the appointment of a receiver under the bill filed in this cause is under the provisions of Section 57 of Chapter 53 of the Code of West Virginia, and that when such a receiver is appointed your petitioner is advised by counsel, that the laws of West Virginia give such a receiver jurisdiction to take, recover, and hold any property of the American Guaranty Company wherever the same may be found, whether within the jurisdiction of this Court or not; and your petitioner is further advised, that such receiver so appointed under the statute of West Virginia can institute suits in other states to recover the property of the said defendant corporation, and to defend suits affecting such property in other states.

Your petitioner desires to call the attention of this Honorable Court, not only to the propriety and desirability, but also to the necessity of keeping together and of administering as a whole, the property of a corporation like that of the defendant in this
360 cause, for the reason that the relation of the corporation to each one of its contract holders is of the character of a trusteeship. That the corporation is really investing the contract holders' own money and that in any final distribution among the contract holders complete justice can be done only when all of the said contract holders shall be before the Court, and all of the property and assets of the corporation at the same time before the Court, so that the rights of each and every contract holder can be adjudicated; that it is impossible for the courts of the several states in which these contract holders may live to administer the assets in each state; and that injustice will of necessity be done some, unless one court having jurisdiction so to do shall administer the whole assets of the corporation and apportion the same among the contract holders, according to the principles of equity.

Your petitioner in order to emphasize this position alleges that since the dissolution of the defendant corporation the said contract holders have not paid as a rule upon their said contracts, and that in many instances where the money has been sent to the banks, and to the receiver in Illinois, the same has been refused and sent back to the said contract holders, so that the necessary situation now presented by these litigations is that a great majority of the said con-

tracts between the contract holders and the said American Guaranty Company is that many of said contracts have been partially paid and have not matured, and that it will be a question for a Court of Equity to determine, how much should be paid each contract holder out of the funds and assets of said corporation; and your petitioner alleges that none of the same should be paid to any stockholder until every contract holder shall have received his full and just
361 proportion of said funds and assets, and by reason of this apparent situation your petitioner is and will be deprived of that just compensation which he has earned as agent of the said defendant company, for services actually performed in building up the business of the company, out of the premiums which but for the dissolution of the said corporation would have come to him.

Your petitioner, and those in whose behalf he intervenes herein, is therefore, deeply interested beyond the value of all of the stock issued by said corporation in the winding up of this corporation in its dissolution and in the administration of its affairs and assets, and this is the only Court that can afford the relief and that can take the action which is now imperatively necessary to protect the interests of this petitioner, and the other contract holders of said defendant corporation in whose behalf he intervenes.

Your petitioner therefore prays that he be allowed to intervene on behalf of himself and on behalf of the other creditors and contract holders of said defendant corporation, in whose behalf he appears, and on behalf of all other contract holders and creditors of said defendant corporation similarly situated, and that he and they be made parties defendant to this cause and be permitted to answer the bill and to take such other steps to protect their interests herein as may be necessary and as equity may require. That the receiver heretofore appointed herein, to-wit: V. L. Black, be discharged as such receiver upon the ground that he, the said V. L. Black, is a member of the firm of Brown, Jackson & Knight who represent the plaintiffs in this cause, and the said plaintiffs being all of the stockholders herein and in the view of your petitioner the interests of the said stockholders being inimical to the interests of your peti-
362 tioner and other contract holders, the said Black is not so situated as to do and perform the things necessary to be done to protect your petitioner and the others similarly situated with him, as to the property and assets of the said defendant corporation, and this without meaning to reflect upon the personal integrity or character of the said V. L. Black.

Your petitioner further prays that the jurisdiction of the Receiver in this cause be enlarged and extended so as to embrace jurisdiction, control, ownership and management of the entire assets, property and funds of the defendant corporation wherever situated, and that power and authority be given the said Receiver to sue or to take any such other action that may be necessary to recover and hold the property of the said defendant corporation, wherever the same may be found, whether in this state or any other state or territory, and that the bond of the said Receiver be enlarged to a sum at least two hundred and fifty thousand dollars ($250,000.00) instead of

five thousand dollars ($5,000.00), the present bond of said Receiver. That such proceedings be taken herein as will compel the plaintiffs in this cause, and all other persons, to respect the jurisdiction of this Court, to obey its decrees and orders and to respect and obey the injunction already issued by this Honorable Court herein and to be issued herein. That this cause be referred to a commissioner in chancery to take, state, report an account, showing who are the creditors, and who are the contract holders of the said defendant corporation, and the amount paid in by each contract holder upon his contract and when paid and the amount due to each contract holder and the amount of assets, liable to the payment of the same and to which the defendant corporation is in any way entitled.

363 That this Court will authorize the said Receiver to employ counsel in this and in other states to at once present the rights of the Receiver appointed under the statutes of this state to the courts of this or any other state, claiming to have the right to administer the funds and assets of the defendant corporation, and urge upon such Courts the propriety and the advisability of allowing this the first Court to take jurisdiction of the said corporation, to administer fully all of the assets and property of the said corporation and to adjust among the contract holders and creditors the many diverse questions of law and fact which will arise between and among them concerning the administration of a great trust of this character. That the creditors and the contract holders of the defendant corporation be assembled and be allowed time and ample opportunity to present before a commissioner in chancery, to be appointed by this Honorable Court, or to this Court, the claims and the rights of each before any final decree shall be made herein, and that such counsel be also authorized and empowered to present to the Federal or state courts of any other state claiming to have the right to administer any such funds or assets, the laws of West Virginia and the peculiar provisions thereof, and the statutory powers given to such a receiver as can be appointed in this kind of a proceeding, and that such receiver shall present in any such Federal or state court in this or in any other state, the position that a receiver appointed in this kind of a proceeding is a statutory receiver and when appointed becomes the representative of the corporation, not only in this state, but in every state and territory and stands for and speaks for such corporation, and that all such further actions and

364 proceedings may be taken and all such further orders and decrees entered herein as will fully protect the rights of your petitioner and those on whose behalf he intervenes, and those of all others similarly situated, and that your petitioner be granted such other, further and general relief in the premises as he may be entitled to.

And in duty bound, etc.

W. R. GILLIAM.

F. W. HOUGHTON,
GEO. E. EDGERTON,
CHILTON, MacCORKLE & CHILTON,
Sol's for P'ffs.

365 STATE OF WEST VIRGINIA,
Kanawha County, ss:

This day personally appeared before the undersigned authority, Warren R. Gilliam, who being sworn upon his oath says, that he is the petitioner named in the foregoing petition and has read the same and knows the contents thereof; that the allegations contained are true, except so far as they are therein stated to be upon information and belief, and in so far as they are therein stated to be upon information and belief, he believes the same to be true.

W. R. GILLIAM.

Taken, subscribed and sworn to before me this 18th day of September, 1909.

W. E. CHILTON,
Notary Public, Kanawha County, West Virginia.

366 (Exhibit "A" referred to and filed with the foregoing Petition, is in the words and figures following, to-wit:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. #29336.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and Also in Her Own Right, and Caroline La Tour Furey, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof:

Carrie Rebecca Furey, as executrix of the last Will and Testament of Charles La Tour Furey, deceased, and also in her own right, and Caroline La Tour Furey, complainants, bring this, their bill of complaint against the American Guaranty Company of Chicago, hereinafter called the Guaranty Company, defendant, and thereupon your orators complain and say:

1. That said Charles La Tour Furey departed this life on or about November 29th, 1908, in the City of Chicago, County of Cook and State of Illinois; that at the time of his death and for many years continuously therefrom, he was a citizen of said State of Illinois and a resident of said city; that said Carrie Rebecca Furey is the widow, and said Caroline La Tour Furey is the daughter of said Charles La Tour Furey, deceased; that at the time of
367 the death of said Charles La Tour Furey, and for many years continuously theretofore and continuously since, your orators were, and have been and now are citizens of said State of Illinois, and residents of said city of Chicago; that said American Guaranty

Company of Chicago, is a corporation duly organized and doing business under and by virtue of the State of West Virginia, and is not incorporated under the laws of any other state, territory or country; that it is a citizen of the State of West Virginia and of no other state, territory or country; that it has heretofore duly complied with the laws of the State of Illinois governing foreign corporations and is duly licensed and authorized to do business in said State; that the matters in dispute in this case exceed, exclusive of interest and costs, the sum or value of $2,000.

2. That said Charles La Tour Furey left a last will and testament, which was duly admitted to probate in the Probate Court of said Cook County, Illinois, on December 8th, 1908; that on said date letters testamentary duly issued out of said Probate Court to said Carrie Rebecca Furey, as executrix of the last will and testament, and on said date she duly qualified as such executrix and since said date has continued to and still is acting as such executrix; that said letters testamentary are still in full force and effect, unrevoked and unappealed from; that in and by said last will and testament, one James L. Bigelow was named as executor thereof, but that prior to said December 8th, 1908, said Bigelow, in writing duly filed in said Probate Court, duly renounced his said appointment and refused to act as such executor; that a true and correct copy of said last will and testament is hereto attached, marked Exhibit A and by express reference made a part hereof.

368 3. That in and by said last will and testament said Charles La Tour Furey, deceased, devised to his widow said Carrie Rebecca Furey and to his daughter, Carolina La Tour Furey all of his real estate and personal property of every description of said decedent, to have and to hold the same share and share alike absolute and in their own right; that his said widow and his said daughter, who is now of the age of said nineteen years, were and are the sole and only heirs at law of said decedent.

4. That at the time of his death said Charles La Tour Furey was the absolute owner of 602 shares of the capital stock, of the par value of $100.00 each, of said Guaranty Company, and that the absolute total of said 602 shares of stock is now in your orator, Carrie Rebecca Furey, as executrix, as aforesaid, solely for the benefit of herself and her said daughter, Caroline La Tour Furey, and said Carrie Rebecca Furey, as executrix as aforesaid, now has in her possession all of the stock certificates representing said 602 shares of the capital stock, which certificates were duly issued by said Guaranty Company to said decedent long prior to his death; that said 602 shares of stock are fully paid and non-assessable and are worth, to-wit, over $62,000.00.

5. That on or about March 10th, 1906, said Guaranty Company duly entered into a contract with said Charles La Tour Furey, under and by the terms of which said Guaranty Company agreed to pay him certain commissions as compensation for services to be rendered by him to said Guaranty Company, which services were by him duly rendered and performed; that under and by the terms of said contract said Guaranty Company became and now is indebted to

POOR COPY

said Carrie Rebecca Furey, as executrix as aforesaid, in the sum of $14,798.42, which sum is now due and owing by said Guaranty Company to said executrix as such, for such services.

369 6. That said Guaranty Company was duly incorporated by a certificate of incorporation, issued under the laws of West Virginia, on July 18th, 1892, under the name of The American Investment Guaranty Company, with an authorized capital stock of $200,000., and with authority to increase the same to $1,000,000.00; that thereafter, on or about January 12th, 1898, the name of said company was duly changed from that of The American Investment Guaranty Company to the American Guaranty Company of Chicago; that on April 13th, 1901, the authorized capital stock of said Guaranty Company was duly reduced from 10,000 shares, of the par value of $100, to 5,000 shares of the par value of $100 each, and that since April 13th, 1901, the authorized capital stock of said company has been $500,000.00; that said Guaranty Company was duly incorporated for a period expiring July 1st, 1942, and one of the objects for which it was and is incorporated is to enter into contracts with individuals, firms and corporations, which are known as investment, service and income contracts, hereinafter more particularly referred to, and the principal office of said Guaranty Company, even since its incorporation has been and is in the city of Charleston, in Kanawha County, in the State of West Virginia; that its administrative offices have been and now are in said City of Chicago; that a true and correct copy of said certificate of incorporation and of all amendments thereto is hereto attached, marked Exhibit B, and by express reference thereto made part hereof.

7. That in the conduct of its said business the Guaranty Company has issued a large amount of said investment, service and income contracts; that it now has outstanding, in full force and effect, contracts of a total nominal or possible contingent value aggregating in amount, to-wit: $15,825,000.00, divided into, to-wit: $3,254,-

370 000.00 of investment and service contracts, and to-wit, $12,-571,000.00 income contracts. That said contracts vary respectively from a minimum principal of $1,000 to a maximum principal of $10,000.00 on the date of their maturity; that said contracts mature at periods of ten, fifteen and twenty years from their dates of issue; that the total cash or surrender value of all of said contracts is many million dollars less than their said nominal or contingent value; that there are to-wit; 6500 of said contracts now outstanding held by persons who live in various parts of the United States, Canada, and Mexico; that all of said contracts provided by their terms that the holders thereof shall pay to said Guaranty Company specified amounts in periodical installments, payable monthly, quarterly, semi-annually or annually, and further provide that default in making any of said periodical payments during the first two years of the life of said contracts shall result in a forfeiture thereof, and that after the lapse of said two years said contracts shall become non-forfeitable, but that defaults made subsequent to said two years shall result in either an exchange of the contract for one that is paid up, or a surrender thereof for a specified

cash surrender value; that there are attached hereto specimen copies of said investment, service and income contracts, as Exhibits C, D and E and which by express reference thereto are made part hereof.

8. That said investment and service contracts provide by their terms that as security for the redemption of the same, said Guaranty Company shall have and keep in trust, moneys and other securities to such an amount as shall at the time equal in the aggregate seventy-five per cent. of the cash value of said contracts, as shown by the schedules appended thereto, and that said income con-
371 tracts, (issued prior to 1906, contain similar terms), and said income contracts issued in 1906 and since, provide that the moneys and other securities so to be kept in trust shall be in an amount equal to the cash loan value specified in said income contracts, less the amount of any unpaid loans thereon; that pursuant to the provisions so contained in said contracts, said Guaranty Company did deposit and now has on deposit with the Royal Trust Company of Chicago, a corporation duly organized and doing business under and by virtue of the laws of Illinois, a fund consisting of cash and other securities aggregating over $550,000.; that in addition to said fund said Guaranty Company has assets, consisting of cash, securities, bills receivable, loans to contract-holders and other assets that your orators estimate to be over $750,000.

9. That though the total authorized capital stock of said Guaranty Company is now $500,000. there was at the time of the death of said Charles La Tour Furey, and there are now issued and outstanding only 962 shares of said stock, of the par value of $100. each; that of the said 962 shares, 602 shares belong, as aforesaid, to and are the property of your orators, as hereinbefore stated; that the remaining 360 shares belong, 260 thereof to Lewis W. Pitcher, and the other 100 shares to James L. Bigelow, respectively, who now and for many years continuously last past have been Secretary and Treasurer of said Guaranty Company; that the said 260 shares so belonging to said Pitcher are now, and since March 28th, 1906, have continuously been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Pitcher to said Guaranty Company, contracted prior to the date last afore-
372 said; and that the said 100 shares belonging to said Bigelow now are and continuously since March 24th, 1905, have been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Bigelow to said Guaranty Company, contracted prior to the date last aforesaid.

10. That on or about January 1st, 1899, said Charles La Tour Furey first became connected with said Guaranty Company, and on or about said date was elected Vice-president of said Guaranty Company, and so continued up to the time of his death, and during all of said time had the active management and control of the business of said Guaranty Company; that on June 23rd, 1903, at a meeting of the board of directors of said Guaranty Company, the following resolution was duly and unanimously adopted.

"Resolved, the Vice-president, by virtue of his office is hereby

onstituted Chairman of the Board of Directors and is to assume and
erform all the duties of the President it being also understood that
he Vice-president shall take upon himself the duty of generally su-
ervising all details and operation of the business."

That pursuant to said resolution, and in compliance therewith,
aid Charles La Tour Furey, as such Vice-president, did continuously
ince June 23rd, 1903, until the time of his death, act as Chairman of
he Board of Directors of said Guaranty Company and assumed and
erformed all the duties of the President thereof, and took upon
imself the duty of generally supervising all details and the opera-
ion of the business of said Guaranty Company; the said Charles
La Tour Furey possessed expert knowledge and ability
373 in the said kind of business in which the said
Guaranty Company was engaged in as aforesaid, and
y reason thereof *it* was put and continued in the prac-
ical control and management of said business and was in such
ontrol at the time of his death; that when he first became such
ice-president of such company, the total outstanding contracts of
aid Guaranty Company was about $3,000,000, while at the time of
is death the same aggregated about $15,825,000.00; that such in-
rease was due to his said expert knowledge and ability; that your
rators and said Guaranty Company and its officers and directors
ave been unable to secure or agree upon a successor to said decedent;
hat your orators never had any business experience of any kind and
hat neither of them has the ability, qualifications or willingness to
onduct said business; that neither one is willing to consent that the
ame shall be conducted and carried on; that your orators and said
Pitcher and Bigelow together owning all of the issued capital stock
f said Guaranty Company, as aforesaid, have concluded that it is
o the best interest of said Company, and to all the contract holders
nd stockholders, that said company shall be dissolved and its busi-
ess and affairs wound up and its assets liquidated and distributed
n accordance with the rights of those entitled thereto; that other
han its obligations, on said contracts said Guaranty Company has
o liabilities whatever except to a nominal amount for current ex-
enses, and except that owing Carrie Rebecca Furey as executrix as
foresaid, and to one or more agents for possible commissions; that
aid Guaranty Company has no liabilities of any kind in the state of
West Virginia other than to 48 contract holders, none of whose con-
racts has matured and upon none of which is said Guaranty Com-
pany in any way in default, and the total surrender or cash
374 value of which does not exceed $9751.44; that all of the
property and effects of said Guaranty Company are in said
ity of Chicago, except a few cash balances and a little more than
he nominal amounts and due to said Guaranty Company from
anks outside of Chicago, which have been the collecting agents of
aid Guaranty Company.

11. That on February 1st, 1909, in accordance with the statutes of
he State of West Virginia authorizing the same, a bill in chancery
vas filed in the Circuit Court of Kanawha County, West Virginia,
n which the principal office or place of business of said

Guaranty Company was situated, praying that the Court decree a dissolution of said Guaranty Company and to make such other orders and decrees as justice and equity may require, and in said bill, so filed, said Pitcher and Bigelow duly intervened and joined as plaintiffs, and joined in the allegations and prayer of said bill; that said Guaranty Company duly entered its appearance to said bill; that on February 1st, 1909, said Circuit Court of Kanawha County, having full jurisdiction of all of the parties to and subject-matter of said bill, duly entered a decree dissolving said American Guaranty Company of Chicago, which decree is now of full force and effect, unmodified, unreversed and unappealed from; and also appointed a receiver, who has duly qualified as such, of all of said Guaranty Company's assets and effects located within said State of West Virginia; that a true copy of said proceedings in said Circuit Court of Kanawha County is herewith brought into court.

12. That in consequence of the entry of said decree of dissolution, said American Guaranty Company of Chicago has become trustee for its creditors and stockholders, of all of its property, assets and effects; that the receiver so as aforesaid appointed by said Circuit Court of Kanawha County has no jurisdiction out-
375 side of the state of West Virginia and has no authority or power outside of said state of West Virginia, to collect or enforce collection of all of said property, assets and effects, that all of said property, assets and effects, as hereinbefore stated, except some nominal amounts held by some few banks in the progress of collection are located within said city of Chicago and within the jurisdiction of this court; that it is necessary to ascertain what, if anything, is owing to any and all of said 6,500 contract holders, and how much, if anything, in said fund so on deposit with said Royal Trust Company of Chicago, shall be allotted or apportioned to any and all of said contracts; that the surrender value of said contracts is at least $1,000.00. That some of the holders of said contracts threaten, as your orators are informed and believe, and state the fact to be, that they will commence suits by attachment or otherwise against said Guaranty Company and levy upon its said property, assets and effects so situated in said State of Illinois, and that by means of such attachments, priorities will be secured by some of the contract holders over others; that interminable, complicated and costly litigation will ensue and the property, assets and effects of said Guaranty Company will be wasted and destroyed to such a degree as to make the same utterly inadequate and insufficient, unless such property, assets and effects are taken possession of by a receiver to be appointed by this court to conserve and distribute the estate of said Guaranty Company among those entitled thereto.

13. That your orators file this, their bill of complaint, not only on behalf of themselves but also on behalf of all other stockholders of said Guaranty Company, and of all other creditors thereof
376 who may ask and secure leave to intervene herein and become parties hereto.

In consideration whereof and for as much as your orators are

remediless in the premises at or by the strict rules of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable, to the end therefor that the said American Guaranty Company of Chicago, which is hereby made defendant to this bill of complaint, may, if it can, show unto your Honors why your orators should not have the relief hereby prayed; full, true and just account may be had and taken of all the property, assets and effects of every description of said defendant; that all of its creditors and contract holders may be ascertained and the amount or amounts due or owing all of them, respectively; that all of its stockholders and the amount of the stock held or owned by them, respectively, will be ascertained; that all of said creditors, contract holders and stock holders be allowed to file their petitions, exhibiting their respective claims and demands, and to prove the same according to the usual practice of this court; that distribution be made of all of its property, assets and effects, when converted into money, first among its creditors and contract holders as equity may require, and after satisfying all of its said creditors and contract holders, that the surplus remaining shall be distributed among its stockholders; that whatever funds, if any, may be found by this Honorable Court to be held in trust for all or any of said contract-holders shall be allotted and distributed by this court as equity may require; that a receiver may be appointed according to the course of practice, in this court, and that the usual powers of receivers in like cases of all property, assets and effects of every description of said defendant, and that said receiver be ordered and directed to convert
377 said property assets and effects into money at the earliest practical moment; to collect all debts due said defendant; to bring such suits as may be necessary to accomplish that end, and to bring and defend all such suits as may be necessary to assert the rights and claims of said defendant in said property, assets and effects, and to do all other acts necessary or proper to protect said property assets and effects; that all individuals, firms and corporations including all the officers, agents and employés of said defendant may be required and commanded, on demand of said receiver to forthwith turn over and deliver to him any and all property, moneys, assets and effects, books, papers, vouchers and documents of every kind and description under their or any of their control which said defendant owns or is entitled to, or in which it has any interest; that any and all creditors and contract holders of said defendant, and any and all other individuals, firms and corporations be enjoined from in any way intermeddling by suit or otherwise with all or any of the property, assets and effects of said defendant, and that your Honors may make such other orders and decrees and grant your orators such further or other relief as the controlling circumstances in this case may require and to equity and to your Honors shall seem fit and proper.

May it please your Honors to grant unto your orators a writ of subpœna to be directed to said American Guaranty Company of Chicago, thereby commanding it, at a certain time and under a

certain penalty therein to be limited, to appear before this Honorable Court, and then and there full, true, direct and perfect answer make, but not under oath, the same being hereby expressly waived, to all and singular, the premises and further to stand to, perform and abide such further order, direction and decree therein as to
378 the Honorable Court shall seem meet.

And your orators will ever pray etc.

STEELE, WILLIAMS & STEELE,
Sol. for Compl't, 659 Rookery.

EXHIBIT A.

The Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Upon reading and filing the verified bill of complaint in this cause, together with the exhibits in support thereof, and the answer of said American Guaranty Company of Chicago, confessing the allegations contained in the bill of complaint filed herein to be true, and that said complainants are entitled to the relief herein prayed, and on motion of the counsel for complainants, and counsel for defendant appearing and consenting thereto.

It is ordered by the Court, that Edwin A. Potter of Chicago, in the County of Cook, and State of Illinois, be and he is hereby appointed receiver of this court, of all and singular the property of said American Guaranty Company of Chicago of every description and of all moneys, claims in action, credits, bonds, stocks and other assets of every kind, and of all other property real, personal and mixed, held or possessed by said Co., or to which said Co. is
379 entitled, or in which it has any interest, to have and to hold the same as an officer of and under the orders and directions of this court.

The said receiver is hereby authorized and directed to take immediate possession of all and singular the property, assets and effects above described, and each and every of the officers, directors, agents and employés of said American Guaranty Company of Chicago, and all other individuals, firms and corporations are hereby required and commanded to forthwith on demand of said receiver turn over and deliver to such receiver any and all property, assets and effects of every kind and description, books, papers and vouchers in their or any of their control and belonging to or to which said American Guaranty Co. of Chicago is entitled, or in which it has any interest, and the said American Guaranty Co. of Chicago, its

officers are hereby directed immediately to execute and deliver to the said receiver a deed or deeds of all real estate now owned or possessed by said Co. and transfers and assignments of all the property assets and effects of said Co. Said receiver is hereby fully authorized to institute and prosecute all such suits as he may deem necessary or proper and to defend all such actions against him as such receiver, and also to appear in and conduct the prosecution or defense of any suit or suits against said Co.

Said receiver is hereby authorized and directed to employ such counsel, attorneys, solicitors, agents, clerks and assistants as he may deem necessary or proper in the discharge of his duties as such receiver.

Said receiver is hereby authorized and directed to deposit all moneys coming into his hands as such receiver in the American Trust & Savings Bank of Chicago, Illinois, and such other
380 bank or banks as the court may from time to time direct.

All creditors and contract holders of said American Guaranty Co. of Chicago are hereby enjoined from in any way intermeddling, by suit or otherwise, with all or any of the property, assets and effects hereby directed to be turned over to said receiver, and all officers, directors, agents and employees of said American Guaranty Company of Chicago are hereby enjoined from interfering with or disposing of all or any of said property, assets and effects, of said American Guaranty Co. in any way except to transfer, convey and turn over the same to said receiver.

Said receiver is hereby required to file with the clerk of the court a proper bond in the penal sum of $50,000 with the Empire State Surety Co. of New York as surety, and said receiver here now appears in open court and accepts his said appointment as receiver herein, and now here presents said bond in the penal sum of $50,000, with said surety, which said bond the court now here finds to be proper in form and to have been properly executed and now here approves the same.

Entered Feb. 2, 1909.

KOHLSAAT, *J.*

381 EXHIBIT A.

The Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. # 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Now comes said American Guaranty Co. of Chicago, and confesses each and all of the allegations contained in the bill of complaint filed herein to be true, and that said complainants are en-

titled to the relief therein prayed, and consents to the appointment forthwith by this Honorable Court of a receiver of all the property, assets and effects of every description of said American Guaranty Co. of Chicago, and to the entry of such further orders and decrees from time to time in the premises as the Court may deem proper

AMERICAN GUARANTY CO. OF CHICAGO,
By FREDERICK M. STEELE, *Pres.*

Attest:
L. W. PITCHER, *Secretary.*

AMERICAN GUARANTY CO. OF CHICAGO,
By GORHAM & WALES, *Its Solicitors.*

(Consent.)

382 Exhibit "B" referred to and filed with the foregoing Petition, is in the words and figures following to-wit:

EXHIBIT B.

Allela E. Morgan, Administratrix of the estate of F. L. Morgan, deceased	$6500.00
Kenneth G. Brill	2000.00
Phillip J. Schaub	2000.00
Peter A. Schaub	3000.00
Ronald Stewart	6000.00
D. S. Elliott	6000.00
W. J. Schindler	15000.00
C. D. MacLaren	8000.00
A. P. Ballard	5000.00
J. A. Ballard	2000.00
C. H. Darling	2000.00
S. O. Arnold	5000.00
Chas. R. Pease	2000.00
Louis E. Wilson	2000.00
C. A. Upton	2000.00
G. H. Walker	2000.00
Maud Walker	2000.00
M. C. Lampher	2000.00
C. F. Forssell	6000.00
W. W. Cantwell	5000.00
Wm. F. Rohrbeck	2000.00
Chas. F. Schneider	1000.00
George Luckert	1000.00
M. M. Metcalf	5000.00
383 Otto Albrecht	5000.00
Chas. E. Howe	5000.00
C. M. Benham	6000.00
D. P. Cary	4000.00

Edgar Mathes	6500.00
James B. Redpath	5000.00
F. Van Duyne	10000.00
F. E. Willaume	2000.00
P. J. Towle	10000.00
Frank I. Towle	2000.00
W. J. Derrick	2000.00
H. L. Jenkins	4000.00
S. Reisman	2000.00
M. Bantz	2000.00
Frederick L. Schmalz	5000.00
E. Schmalz	5000.00
D. Schmalz	2000.00
Geo. M. Wooley	2000.00
S. Brand	2000.00
Alfred Miller	2000.00
Joseph Matz	5000.00
C. J. Sonnen	2000.00
J. W. Ryan	2000.00
P. J. Sonnen	5000.00
A. H. Sonnon	2000.00
Louise Everett	2000.00
Andrew Rankin	5000.00
E. A. Hough	2000.00
H. C. Travis	5000.00
Clinton K. Kinney	2000.00
J. S. Woodburn	5000.00
384 Brewster Smith	2000.00
H. W. Ewing	2000.00
C. A. Crowl	2000.00
Alice S. Kirk	2000.00
E. A. Kirk	4000.00
J. C. Shadegg	5000.00
Thomas W. Russell	5000.00
Frank A. Reid	5000.00
O. J. Morawetz	5000.00
J. E. Linquist	5000.00
Clem Magaw	2000.00
G. A. McGrea	2000.00
L. B. Libby	2000.00
A. E. Reuillard	2000.00
W. T. Boutell	5000.00
W. D. Boutell	5000.00
A. L. Evans	6000.00
August E. Johnson	5000.00
Edward W. Murphy	5000.00
Harry B. Cramer	5000.00
Chas. H. Carpenter	533.00
J. A. Monahan	14000.00
W. V. & V. A. Whipple	20000.00

L. C. Konkle	266.00
W. A. Tanner	5000.00
Thos. E. Cootey	5000.00
E. W. Diercks	5000.00

385 (Receiver's bond referred to in the foregoing order is in the words and figures following, to-wit:)

Bond.

Know all men by these presents:

That we, Edwin M. Keatley, principal, and the American Surety Company of New York, surety, are held and firmly bound unto the State of West Virginia, in the just and full sum of Two Hundred and fifty thousand Dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 24th day of September, 1909.

The condition of the above obligation is such, That whereas, the above Edwin M. Keatley was, by a decree of the Circuit Court of Kanawha County, West Virginia, entered on the 22nd day of September, A. D. 1909, in the Chancery cause therein pending, wherein Carrie Rebecca Furey and others are plaintiffs, and the American Guaranty Company and others are defendants, appointed Receiver of said American Guaranty Company to take custody, possession and control of all and singular the property and assets of the said American Guaranty Company, with the powers and duties set forth in said decree.

Now therefore, if the said Edwin M. Keatley, shall faithfully discharge his duties as such Receiver and shall faithfully account for and pay over all property and assets which may come into his hands as such Receiver, then this obligation to be void, else to remain in full force.

EDWIN M. KEATLEY. [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK,
By A. E. SCHERR, [SEAL.]
Resident Vice-President.

386 Acknowledged before me and approved, this Sept. 24th. 1909.

S. C. BURDETT, *Judge.*

STATE OF WEST VIRGINIA,
Kanawha County, ss:

I, Ira H. Mottesheard, Clerk of the Circuit Court in and for the County and State aforesaid, do certify that A. E. Scherr, Resident Vice-President, personally appeared before me in my said County, and being by me duly sworn, did depose and say that he is the resident Vice-President of American Surety Company of N. Y., a cor-

poration, described in the writing hereto attached, bearing date the 24th day of September, 1909, authorized by said corporation to execute and acknowledge bonds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said A. E. Scherr, resident Vice-President, acknowledged the said writing to be the act and bond of said Corporation.

Given under my hand and official seal this 24th day of Sept., 1909.

IRA H. MOTTESHEARD,
Clerk Kanawha Circuit Court.

387 Form C. 519. 500–4–09.

Plural.

Extract from the Record Book of the Executive Committee of the American Surety Company of New York.

"A meeting of the Executive Committee of the American Surety Company of New York was held on the 15th day of June, 1909.

"The following resolutions were adopted:

"Resolved, That A. E. Scherr, of Charleston, West Virginia, be and he is hereby constituted and appointed Resident Vice-President of this Company at the town or city, aforesaid, with full power and authority to execute and deliver any and all surety bonds and undertakings, for or on behalf of this Company, in its business and in accordance with its charter; such bonds and undertakings to have in every instance, however, the seal of this Company affixed thereto, and to be attested by the signature of a Resident Assistant Secretary of this Company."

"Resolved, That Westley Mollohan and George W. McClintic, of Charleston, West Virginia, be and they hereby are and each of them is hereby constituted and appointed a Resident Assistant Secretary of this Company at the town or city, aforesaid, with full power and authority to attest any and all surety bonds and undertakings, for or on behalf of this Company, in its business and in accordance with its charter; such bonds and undertakings to have in every instance, however, the seal of this Company affixed thereto, and to be executed on behalf of this Company by one of its Resident Vice-Presidents."

388 STATE OF NEW YORK,
County of New York, ss:

I, H. A. Reiss, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Executive Committee of the American Surety Company of New York, with the original record of said Executive Committee, and that the

same are correct extracts and transcripts therefrom, as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same are correct and true transcripts therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and seal of the Company, at the City of New York, this 16th day of June, 1909.

H. A. REISS,
Assistant Secretary. [SEAL.]

389 (And at another day to-wit: At a Circuit Court for Kanawha County, held at the Court House thereof, on the 24th day of September, 1909.)

In Equity. No. 2019½.

CARRIE REBECCA FUREY & Others
vs.
AMERICAN GUARANTY COMPANY & Others.

This day came Edwin M. Keatley, the Receiver appointed in this cause by decree entered herein on the 22nd day of September, A. D. 1909, and tendered his bond, as such Receiver, in the penalty of two hundred and fifty thousand dollars, with the American Surety Company of New York as surety thereon, conditioned as required by said decree of September 22nd, 1909, and in all respects in due form and according to the requirements of the Court and the said decree appointing said Receiver, which said bond is duly executed and acknowledged before the Court, and before the Clerk thereof, by said Edwin M. Keatley, and by said American Surety Company of New York; and thereupon it is ordered that said bond be, and the same is hereby approved by the court and is accepted and filed, and thereupon the said Edwin M. Keatley is duly qualified and entered upon the discharge of his duties as such Receiver.

390 (And at another day to-wit: At a Circuit Court for Kanawha County, held at the Court House thereof, on the 27th day of September, 1909.)

In Equity.

CARRIE REBECCA FUREY & Others
vs.
AMERICAN GUARANTY COMPANY & Others.

This day came again W. R. Gilliam who filed his petition herein on the 22nd day of September, 1909, by Chilton, MacCorkle & Chilton, his attorneys, and asked leave to further amend his petition herein as follows: to-wit: To strike out the words "American Guar-

anty Company" where the same appears in said petition, and insert in lieu thereof the following, to-wit: "American Guaranty Company of Chicago," which said leave is granted and said petition is accordingly amended; and it being suggested and shown to the Court that the proper name of the said defendant corporation is the American Guaranty Company of Chicago, and it being shown that by inadvertence the name of said defendant corporation was improperly stated as the American Guaranty Company instead of the American Guaranty Company of Chicago in the order and decree entered herein on the 22nd day of September, 1909, and that said decree should be corrected accordingly;

The Court doth now direct that the said decree of September 22nd, 1909, be, and the same is hereby, corrected and modified as follows, to-wit: That wherever the words "American Guaranty Company" appear therein, the same shall be changed and modified so as to read the "American Guaranty Company of Chicago"; and,

391 Thereupon came Edwin M. Keatley, the Receiver heretofore appointed herein as Receiver for said defendant, American Guaranty Company of Chicago, and tendered his bond as Receiver of said American Guaranty Company of Chicago, in the penalty of Two Hundred and Fifty Thousand Dollars ($250,000.00) with the American Surety Company of New York as surety, conditioned that the said Receiver will faithfully discharge his duties as such Receiver, and will faithfully account for and pay over all property and assets which may come into his hands as such Receiver, which said bond is duly acknowledged by both the principal and surety, before the Clerk of this Court and before this Court; and thereupon it is ordered that the said security upon said bond be, and the same is hereby, approved by the Court and the said bond is accepted and in all respects approved; and thereupon said Receiver duly qualified and entered upon the discharge of his duties as Receiver.

(Bond referred to in the foregoing order is in the words and figures following, to-wit:)

392 ***Bond.***

Know all men by these presents:

That we, Edwin M. Keatley, principal and the American Surety Company of New York, surety, are held and firmly bound unto the State of West Virginia in the just and full sum of Two Hundred and fifty thousand dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 27th day of September, 1909.

The condition of the above obligation is such,

That Whereas, the above Edwin M. Keatley was appointed Receiver of all and singular the property and assets of the American Guaranty Company of Chicago, by decree of the Circuit Court of Kanawha County, West Virginia, entered in the Chancery cause

therein pending wherein Carrie Rebecca Furey and others are plaintiffs and said American Guaranty Company of Chicago and others are defendants which said decree was entered on the 22nd day of September, 1909, and modified and corrected on the 27th day of September, 1909.

Now therefore, if the said Edwin M. Keatley shall faithfully discharge his duties as such Receiver and shall faithfully account for and pay over all property and assets which may come into his hands as such Receiver, then this obligation to be void, else to remain in full force.

EDWIN M. KEATLEY. [SEAL.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By A. E. SCHERR, [SEAL.]
Resident Vice-President.

Acknowledged before me and approved before me in open Court this 27th day of Sept., 1909.

S. C. BURDETT,
Judge of said Court.

393 STATE OF WEST VIRGINIA,
Kanawha County, ss:

I, Ira H. Mottesheard, Clerk of the Circuit Court in and for the County and State aforesaid, do hereby certify that A. E. Scherr, Resident Vice-President, personally appeared before me in my said County, and being by me duly sworn, did depose and say that he is the Resident Vice-President of American Surety Company of New York, a corporation, described in the writing hereto attached, bearing date the 27th day of Sept., 1909, authorized by said corporation to execute and acknowledge bonds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said A. E. Scherr, Resident Vice-President, acknowledged the said writing to be the act and bond of said corporation.

Given under my hand and official seal this 27th day of September, 1909.

IRA H. MOTTESHEARD,
Clerk Kanawha Circuit Court.

394 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

I, Ira H. Mottesheard, Clerk of the Circuit Court for said County and in said State, do hereby certify that the foregoing is a true, full and complete transcript in the Chancery Cause of Carrie Rebecca Furey et al. vs. American Guaranty Company et al., now pending in said Court.

Given under my hand and the seal of said Court, this, the 28th day of September, 1909.

[SEAL.] IRA H. MOTTESHEARD,
Clerk Kanawha Circuit Court.

395 STATE OF WEST VIRGINIA,
Kanawha County, To wit:

I, S. C. Burdett, sole judge of the Circuit Court in and for the county of Kanawha, in the state of West Virginia, do hereby certify that Ira H. Mottesheard by whom the aforesaid record and certificate were made and given, and who in his own hand writing has thereto subscribed his name, and has thereto affixed the seal of the Circuit Court in and for the county of Kanawha, in the State of West Virginia, was at the time of so doing, and now is, Clerk of said Circuit Court, in and for said County, to all whose acts as such full faith and credit are due and given, and that the said record and certificate are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand this twenty eighth day of September, in the year of our Lord one thousand nine hundred and nine.

S. C. BURDETT.

STATE OF WEST VIRGINIA,
Kanawha County, To wit:

I, Ira H. Mottesheard, Clerk of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, do hereby certify that the Honorable S. C. Burdett by whom the foregoing certificate was made and given, and who in his own proper handwriting has thereunto subscribed his name, was at the time of so doing, and now is, sole Judge of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, duly commissioned and qualified, to all whose acts as such full faith and credit are due and given, as well as in courts of adjudicature as elsewhere.

In Testimony whereof, I have hereunto set my hand and the seal of said Circuit Court, this twenty-eighth day of September, A. D. 1909.

[SEAL.] IRA H. MOTTESHEARD.

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(Endorsed:) Filed Oct. 27, 1909. H. S. Stoddard, Clerk.

397 And on to-wit: the twenty-seventh day of October, 1909, come Edwin M. Keatley as receiver of American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, West Virginia and filed in the clerk's office of said court in said entitled cause a certain Notice, in words and figures following to-wit:

Notice of Edwin M. Keatley.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

In Equity. No. 29,336.

CARRIE REBECCA FUREY, et al., Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

To Steere, Williams & Steere, Mayer, Meyer & Austrian, Gorham & Wales:

Please take Notice, that upon the opening of court Wednesday morning, October 27th, 1909, before his Honor Judge Kohlsaat, in the room usually occupied by him as a court room in the Federal Building, City of Chicago, Illinois, we shall move the court for leave to file in the above entitled cause, the special intervening petition of Edwin M. Keatley as receiver of American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, West Virginia, at which time and place you may appear, if you see fit. We enclose you a copy of said special intervening petition, with such of the exhibits as are not of record in the above entitled action in the above Federal Court of Chicago.

THOS. H. GILL,
F. W. HOUGHTON,
GEORGE B. EDGERTON,
CHILTON, MACCORKLE & CHILTON, *Solrs.*

(Endorsed:) Filed Oct. 27, 1909. H. S. Stoddard, Clerk.

398 And on to-wit: the twenty-seventh day of October, being one of the days of the regular July term of said court, 1909, in the record of proceedings thereof, in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Order of October 27, 1909, Leave Given Edwin M. Keatley to File Intervening Petition.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, et al.,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Now come the parties by their solicitors and now comes on to be heard the motion of Edwin M. Keatley, the receiver of the American Guaranty Company of Chicago heretofore appointed by the Circuit Court of Kanawha County, West Virginia, for leave to file his intervening petition herein, and the court after hearing the arguments of counsel and being fully advised in the premises, sustains said motion.

It is thereupon ordered that leave be, and the same is, hereby given said receiver to file his intervening petition instanter, and leave is given the respondents to file their respective answers instanter, and *is it* further ordered that the replication to said answers be filed within five days from this date.

And thereupon said intervening petitioner is given one week in which to file his brief upon the question of jurisdiction; the respondents to file their briefs within one week thereafter, and the said intervenor has three days thereafter to reply.

399 And on to-wit: the twenty-seventh day of October, 1909, come the American Guaranty Company of Chicago by its solicitors and filed in the clerk's office of said Court in said entitled cause its answer to the petition of Edwin M. Keatley in words and figures following to-wit:

Answer of American Guaranty Company of Chicago to Petition of Edwin M. Keatley, etc.

400 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

No. 29336.

CARRIE REBECCA FUREY et al., Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Answer of American Guaranty Company of Chicago to Petition of Edwin M. Keatley for Leave to Intervene in the Above Entitled Cause.

Now comes said defendant, American Guaranty Company of Chicago, and for answer to the petition of Edwin M. Keatley shows and represents as follows:

1. This defendant neither admits nor denies that said petitioner is a citizen or resident of the State of West Virginia, but admits that the complainants herein are and for several years last past, have been citizens and residents of the State of Illinois; that the defendant American Guaranty Company of Chicago, prior to February 1, 1909, was a corporation organized and existing under the laws of the State of West Virginia; that its principal office is in the City of
401 Charleston, West Virginia, and its administrative office is in the City of Chicago, Illinois, and was and is a citizen and resident of the state of West Virginia.

2. This defendant admits that on Feebruary 1, 1909, Carrie Rebecca Furey and Caroline La Tour Furey appeared before the Circuit Court of Kanawha County, West Virginia, by their attorneys, and duly filed a certain bill in equity in said court against the American Guaranty Company of Chicago. This defendant neither admits nor denies the allegations of said petition with reference to the contents of said bill in equity, but for greater certainty refers to the certified copy thereof heretofore filed herein, and your petitioner prays that said bill may by reference be taken and considered as a part hereof. This defendant admits that Pitcher and Bigelow, stockholders of this defendant, appeared in said court and filed their written joinder in said bill and united in the prayer thereof for the dissolution of this defendant, and that this defendant likewise appeared in said court by its attorney, and filed a written consent and answer to said bill signed by its president and attested by its secretary, and for greater certainty this defendant refers to said joinder and said answer, certified copies of which have heretofore been filed herein.

and by express reference thereto prays that the same may be taken and considered as a part hereof. This defendant further admits that on February 1, 1909, said Circuit Court of Kanawha County, entered a judgment and decree dissolving this defendant, and appointed V. L. Black of Charleston, West Virginia, a receiver
402 of said corporation. But this defendant denies that said Receiver was in and by said decree charged with conservation and collection of all the assets of said corporation and the proper administration and distribution thereof, but on the contrary this defendant asserts that said V. L. Black was simply appointed receiver of all and singular the property and assets of said American Guaranty Company within the State of West Virginia, to have and hold and administer the same under the orders and direction of said Circuit court of Kanawha County, and for greater certainty this defendant refers to said order and decree, a certified copy of which has heretofore been filed herein, and by express reference thereto is made a part hereof. And this defendant expressly denies that said order appointing such receiver and limiting his authority and power to the assets of this defendant within the state of West Virginia, was entered designedly or in fraud or contempt of the Circuit Court of Kanawha County, West Virginia; but this defendant on the contrary expressly alleges and asserts that said Circuit Court of Kanawha County, West Virginia, upon the hearing of said bill and application for a decree of dissolution of this defendant based upon said bill, was fully and freely, by Hal C. Bangs one of the attorneys for the complainants herein, informed as to the reasons for limiting the jurisdiction of said Receiver within the state of West Virginia, and that application would be made on the following day in the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof, located at Chicago, Illinois, for a receiver of all the assets and property of said American Guar-
403 anty Company outside of said State of West Virginia; that said court was fully and freely informed at said time that substantially all of the assets of said Guaranty Company were located at its office in said City of Chicago, and that the due and proper conservation of said assets and distributions thereof at a minimum expense to contract-holders, required the appointment of a receiver of said Guaranty Company with full powers in said Federal Court in said city of Chicago; that said Circuit Court of Kanawha County was fully and freely advised at said time by the attorneys for said complainant, of the facts and circumstances, and of the plan for the dissolution of said Guaranty Company and the distribution of its assets among those entitled thereto, including the filing of the said bill in this court and the appointment of a receiver herein precisely as was afterwards done in this court; that said Circuit Court of Kanawha County with full knowledge of all said facts and circumstances, and of said proposed plan for the appointment of a receiver by the United States Circuit Court at Chicago, Illinois, duly entered the said decree dissolving said American Guaranty Company of Chicago, and appointing V. L. Black receiver of the property and assets of said Guaranty Company within the state of West Virginia.

This defendant denies that true copies of all the documents in said suit in the circuit court of Kanawha County, referred to by said petitioner, Edwin M. Keatley, have been annexed by said petitioner to his said petition as alleged therein. This defendant admits that on February 2, 1909, this cause was instituted by the filing herein of the bill of complaint by Carrie Rebecca Furey and Caroline La Tour Furey, by their attorneys, Steere, Williams & Steere, and that said defendant herein, American Guaranty Company of Chicago,
404 then and there appeared herein and filed an answer confessing each and all the allegations in said bill of complaint, and consenting to the appointment forthwith of a receiver of all of its property, assets and effects of every description, and to the entry of such further orders and decrees from time to time as the court may deem proper, and that said answer was signed by American Guaranty Company of Chicago by Frederick M. Steele, its president, duly attested under its corporate seal by L. W. Pitcher its secretary, and was signed by Gorham and Wales its solicitors. This defendant further respectfully represents and shows to this Honorable Court that a meeting of all the members of the executive committee of said Guaranty Company, was duly held at the office of said company in the City of Chicago, Illinois, on January 30, 1909; that at said meeting the following resolution was duly adopted:

Resolved further, That Messrs. Gorham & Wales, Attorneys of Chicago, Illinois, be and they are hereby retained, requested and directed to enter the appearance of said Company in any proceedings that may be instituted in any court, State or Federal, sitting in Chicago, Illinois, and in such proceedings to consent to the appointment of a receiver or receivers to take charge of and administer the assets of said Company located in the State of Illinois or elsewhere, and to consent to the entry of any and all other orders and decrees in the cause that may be so instituted in Illinois, as they may think proper or as justice and equity may require, and throughout such proceedings last aforesaid to act for and on behalf of and represent said Company as its attorneys and solicitors therein;

that under and in accordance with the by-laws of said American Guaranty Company, duly adopted and then in force, said executive committee was vested with all the powers and duties of the board of directors of said American Guaranty Company;

405 This defendant further represents and shows that under the laws of the State of West Virginia in full force and effect at the time of the entry of the decree of dissolution of this defendant as a corporation on February 1, 1909, it was provided by Sections 58 and 59 of Chapter 53 of the Code of West Virginia, as follows:

"SEC. 58. When a corporation expires, or is dissolved, or before its expiration or dissolution, upon sufficient cause being shown therefor, such court, as is mentioned in the preceding section, may, on application of a creditor or stockholders, appoint one or more persons to be receivers to take charge of and administer its assets; and whether such receiver be appointed or not, may make such orders

and decrees, and award such injunctions in the cause, as justice and equity may require. This section shall apply to corporations heretofore or hereafter chartered by another state, which may have done business and acquired property, or contracted debts in this state, and any of whose creditors or stockholders, or their personal representatives, reside herein; and the circuit court of any county wherein such creditor, stockholder, or personal representative, may reside, or where such assets or property, or part thereof may be, or where the person owing such debts, or having such property in possession, may reside, shall afford such relief as is prescribed in this and the next section. (Code 53:58.)

Effect of Dissolution or Expiration of a Corporation.—Sec. 59. When a corporation shall expire or be dissolved, its property and assets shall, under the order and direction of the board of directors then in office, or the receiver or receivers appointed for the purpose by such circuit court as is mentioned in the fifty-seventh section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. And suits may be brought, continued or defended, the property, real or personal, of the corporation be conveyed or transferred under the common seal or otherwise, and all lawful acts be done in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities, and paying over and distributing its property and assets or the proceeds thereof, to those entitled thereto. (Code 53:59.)

406 That under and in accordance with the statutes of the state of West Virginia in such case made and provided, suits may be brought, continued or defended, and all lawful acts done in the corporate name in like manner or like effect as before the dissolution of said corporation so far as shall be necessary or proper for collecting the debts and claims due the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto; that the bill filed herein is for the purpose of collecting debts and claims due to this defendant, and for converting its property and assets into money and for protecting and prosecuting its rights, and enforcing its liabilities and paying over and distributing its properties and assets and the proceeds thereof to those entitled thereto, and that under and in accordance with said statutes of West Virginia, the bill herein against this defendant may be defended in the corporate name, and that for the purpose of defending the suit herein and carrying out the orders of this court, this defendant continues in existence as a corporation for the purposes mentioned, and notwithstanding the decree of dissolution heretofore entered in the Circuit Court of Kanawha County, West Virginia, on the 1st day of February, 1909, this defendant

under the statutes of West Virginia, and under the law and practice of this court, continues in existence as a corporation of the state of West Virginia, and is a citizen of said state of West Virginia, for the purpose of defending the suit herein and for the collection
407 and distribution of its assets among those entitled thereto under and in accordance with the orders of this court, and as such continues and is a resident of the state of West Virginia and of no other state whatsoever.

This defendant admits that on September 22, 1909, one W. R. Gilliam on behalf of himself and pretending to act on behalf of other contract-holders of this defendant, by permission of court first had and obtained filed an intervening petition in said Circuit Court of Kanawha County in the action therein, heretofore referred to. This defendant represents and alleges that no opportunity was given by said Circuit Court of Kanawha County to the parties therein to answer said petition before the entry of any order thereon; that it is informed and so believes and so states that at Charleston, West Virginia, at 4 o'clock P. M. on Saturday, September 18, 1909, a notice by telephone was served by Chillton, McCorkle & Chillton, attorneys at Charleston, West Virginia, acting on behalf of W. R. Gilliam, on V. L. Black, receiver therein appointed, that on Monday, September 20th, they would apply for leave to file said intervening petition of W. R. Gilliam, and that no copy of said petition was served upon said V. L. Black, or his attorneys, and that on said matter coming up before said Circuit Court of Kanawha County, on the 20th day of September, 1909, said complainants therein were represented by their attorneys, Brown, Jackson & Knight, and that said court refused to continue the hearing of said matter until the counsel at Chicago for any of the parties in this court could arrive in Charleston, West Virginia; this defendant further represents and alleges that the filing of said petition was then and there resisted by the West Virginia counsel for the complainants in said West Virginia Court, and the matters arising on the filing of said petition
408 were argued on September 20 and September 21, 1909; that on September 22, 1909, said Circuit Court of Kanawha County entered an order allowing the filing of said intervening petition of W. R. Gilliam and granting the relief prayed for therein; that said order was entered without allowing time to any of said parties to the West Virginia case to answer said petition and this defendant invites the particular attention of this Honorable Court in and to the terms of said order entered by said Circuit Court of Kanawha County on September 22, 1909, a copy of which is attached to said petition of Edwin M. Keatley, as an Exhibit. This defendant admits that Hal C. Bangs, a member of the firm of Mayer, Meyer, Austrian & Platt, arrived in Charleston, West Virginia from Chicago about 4 A. M. on September 22, 1909, and came into said court at 10 A. M. of said day at which hour said court convened and said decision was rendered about an hour thereafter, but said Hal C. Bangs was not present in said court on September 20 and 21, 1909, during the argument on said motion to file said intervening petition,

and said Circuit Court of Kanawha County would not continue the argument of said motion until his arrival in Charleston; that said Bangs appeared in said Circuit Court of Kanawha County as one of the attorneys of record in said Circuit Court for the complainants therein, and that he did not appear, and never did appear in said proceedings as an attorney for Edwin A. Potter, the receiver appointed by this Honorable Court; that this defendant admits the entry of the order on September 22, 1909, by said Circuit Court of Kanawha County, but denies the validity and legality of the same in all its parts.

This defendant represents and alleges that said order of said Circuit Court of Kanawha County was entered by said court without a full knowledge of all the facts and circumstances, and that no opportunity was given to the parties therein to set up any defense to said petition by way of answer or otherwise, prior to the entry of said order. This defendant admits that said American Guaranty Company of Chicago did not make and execute said deed according to the alleged order of said Circuit Court of West Virginia, inasmuch as under the decree heretofore entered herein by this Honorable Court on February 2, 1909, it was expressly directed that said American Guaranty Company of Chicago and its officers, should immediately execute and deliver to Edwin A. Potter, the receiver appointed herein, a deed or deeds, transfers and assignment of all the property, assets and effects of said American Guaranty Company of Chicago, and that under and in accordance with said order of February 2, 1909, said American Guaranty Company of Chicago, conveyed, transferred and assigned by deed, dated February 2, 1909, duly executed, acknowledged and delivered all its property, assets and effects to said Edwin A. Potter, Receiver herein. This defendant denies that said Edwin M. Keatley, the petitioner herein, is now the duly qualified and acting receiver of said American Guaranty Company of Chicago appointed by the Circuit Court of Kanawha County, West Virginia, and expressly alleges that said order of said Circuit Court of Kanawha County, appointing said Edwin M. Keatley, Receiver, is void and of no force and effect whatsoever. This defendant neither admits nor denies that one T. S. Clark as special commissioner of the Circuit Court of Kanawha County, West Virginia, executed a deed conveying to said petitioner herein all the property and assets of this defendant, but asks for strict proof thereof; and this defendant further alleges and says that such deed if so executed was of no force and effect whatsoever, and this defendant denies that said Circuit Court of Kanawha County had the legal right to order and direct said deed to be made, and denies that your petitioner has any right, title or interest whatsoever to the custody, control or possession of any of the property, assets and effects of said American Guaranty Company of Chicago now held by said E. A. Potter, receiver herein, either as a receiver appointed by the Circuit Court of West Virginia, or as the grantee under said pretended deed. This defendant denies that true copies of all the records and proceedings in the Circuit Court of Kanawha County have been annexed to said petition of said Edwin M. Keatley, but

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on the contrary this defendant expressly asserts and alleges that said petitioner has not attached thereto the answer of this defendant to said intervening petition of W. R. Gilliam filed by this defendant in the Circuit Court of Kanawha County, on October 8, 1909, a true copy of which is hereto attached and marked Exhibit "A," and by express reference thereto made a part hereof the same as if it had been set forth at length herein.

411 3. This defendant admits that the judgment and decree of said Circuit Court of Kanawha County, West Virginia, entered on February 1, 1909, decreeing the dissolution of this defendant, was fully authorized by the statutes of West Virginia; but this defendant denies that the said decree or dissolution in accordance with the statutes of West Virginia, deprives it absolutely and entirely of any power or authority to act in any manner as a corporation thereafter, but on the contrary asserts and alleges that under and in accordance with the statutes of the state of West Virginia hereinabove referred to and the law, this defendant maintained an existence for certain purposes, and could defend suits and do all lawful acts under the corporate seal and in its corporate name for the purpose of collecting the debts and claims due to it, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities and paying over and distributing its properties and assets and the proceeds thereof to those entitled thereto, and also for other purposes. And this defendant denies that the appointment of V. L. Black as receiver of the assets of this defendant by order of said Circuit Court of Kanawha County, entered on February 1, 1909, in any way deprived said corporation or its officers to act or to defend suits brought against it in its corporate name, and this defendant denies that the appointment of said Black as such receiver, took from this defendant and its Board of Directors and its officers, every power, franchise, right and authority to appear for said corporation in this Honorable Court, and to submit to the jurisdiction thereof in this pend-

412 ing action or to give this Honorable Court jurisdiction herein over the person of this defendant, or the subject matter and winding up its affairs by and through the receiver appointed herein, but on the contrary this defendant expressly alleges and asserts under and in accordance with the provisions of the statutes of West Virginia in such case made and provided and the law, this defendant was authorized to appear under its corporate name and defend the proceedings herein instituted, and to consent thereto, and further that under and in accordance with the resolution duly adopted by its executive committee prior to the decree of dissolution entered in said Circuit Court of Kanawha County, this defendant duly authorized and directed its attorneys herein to appear for it and on its behalf, and to consent to the relief prayed in the bill filed herein to take such other and further steps, acts and proceedings as to them might seem proper. And this defendant further denies that the taking of the jurisdiction by this Honorable Court and the appointing of the receiver herein, and the taking possession of the property and assets of this defendant by this Honorable Court was unwarranted and without jurisdiction, and on the contrary this de-

fendant asserts and alleges that the acts and proceedings of this Honorable Court were with full jurisdiction of all the parties hereto, and the subject matter thereof, and that all the proceedings and acts taken in this Honorable Court have been with full jurisdiction in the premises, and this defendant denies that the appearance by this defendant in this Honorable Court by Gorham & Wales, its solicitors, was a fraud upon this Honorable Court, and that all proceedings subsequently taken herein are null and void, but on the contrary expressly asserts and alleges that this defendant with full au-
413 thority directed the entry of its appearance herein and appeared herein and consented to the relief herein prayed, and that such appearance and consent were duly authorized both by resolution of its executive committee adopted prior to the decree of dissolution herein, and by the statutes of the state of West Virginia, authorizing dissolved corporations to prosecute and defend suits seeking relief similar to that sought herein in the corporate name. And this defendant denies that said Edwin M. Keatley is entitled to any relief whatsoever as in and by his said petition prayed.

4. This defendant further represents and shows unto this Honorable Court that under the order entered herein on May 26, 1909, which directed all persons having claims against this defendant to file proofs of claim with James S. Hopkins, Master in Chancery of this court, on or before September 1, 1909, or be forever after barred, there had been on September 1, 1909 filed with said Master in Chancery, 6808 separate proofs of claim against said American Guaranty Company; that since September 1, 1909 and under and in accordance with an order entered herein on October 19, 1909, there had been filed with said Master in Chancery, 411 additional proofs of claim against said American Guaranty Company so that under and in accordance with the order of this court there had been filed with said James S. Hopkins, Master in Chancery, 7219 separate proofs of claim against said Guaranty Company; that all of said claimants by so filing their proofs of claim with said Master have submitted, consented and invoked the jurisdiction of this Court in the premises; that W. R. Gilliam who filed his petition in the Circuit Court of Kanawha County, West Virginia, and as a result of which the
414 petitioner herein was appointed by said Circuit Court of Kanawha County, West Virginia, has filed with said James S. Hopkins, Master in Chancery of this court, his proofs of claims based upon the following contracts of said American Guaranty Company held by him: A-6332; A-11749; A-119; A-12351, and B-50350, which are the same contracts referred to in said Gilliam's intervening petition filed in said Circuit Court of Kanawha County; that said proofs of claim were presented to and duly filed with said James S. Hopkins, Master in Chancery, on the 24th and 28th days of August, 1909, and the 1st day of September, A. D. 1909, and said claims were marked and designated claims No. A-2519; A-3045; M-174; M-181 and C-118, and marked filed on the date aforesaid by said James S. Hopkins, Master in Chancery; that said W. R. Gilliam on August 31, 1909 by George B. Edgerton and F. W. Houghton, his attorneys, filed with said James S. Hopkins, Master in Chancery, his

proof of claim for $49,682. against said American Guaran[ty] Com-
pany, based upon the alleged renewal agency commission c[on]tract
between said Gilliam and this defendant; that said claim for $[49,682]
is the identical claim referred to in said Gilliam's intervening [peti]-
tion filed in said Circuit Court of Kanawha County; that said Gi[lliam]
filed said claims under and in accordance with the orders of t[his]
court entered herein on May 26, 1909, and that by filing his s[aid]
proofs of claim with said Master in Chancery, he has submitted hi[m]-
self and consented to and invoked the jurisdiction of this Honorable
Court in the pending cause, wherein E. A. Potter, has been appointed
receiver of any and all property, assets and funds of this de-
415 fendant; that said W. R. Gilliam also executed two contract-
holders' agreements for the contract-holders' committee herein,
in and by which he appointed said contract-holders' committee his
attorneys in fact, to represent him in any and all court proceedings;
that a copy of said contract-holders' agreement which was exe-
cuted by said Gilliam, is attached to the answer of this defendant
filed in the Circuit Court of Kanawha County, West Virginia, to
the petition of said Gilliam, a copy of which answer has been at-
tached to this petition, and marked Exhibit "A"; that of the eighty-
six claimants against said American Guaranty Company whom said
Gilliam alleged that he represented in his said petition filed in said
Circuit Court of Kanawha County, sixty-nine had prior to September
1, 1909, filed their claims with the Master in Chancery in this
Court, and had consented to and invoked the jurisdiction of this
court; that not one of said claimants so alleged to be represented by
said Gilliam is a resident or citizen of West Virginia, but all are
residents of state of Minnesota; that said contract-holders' com-
mittee acting on behalf of said Gilliam and thousands of other con-
tract-holders represented by it, has appeared in this Honorable
Court, and consented to and acquiesced in all the proceedings
herein;

This defendant further alleges that the said W. R. Gilliam filed
his said intervening petition in the Circuit Court of Kanawha County,
West Virginia, solely for the purpose of harassing and annoying the
receiver herein, in an attempt to induce the receiver herein to con-
sent to a compromise of Gilliam's said claim against this said de-
fendant, and also, for the purpose of endeavoring to secure control
of the administration of the funds of this defendant by pro-
416 ceedings in West Virginia, in order that said Gilliam might
personally profit thereby; that said Gilliam did prior to filing
his said petition in the Circuit Court of Kanawha County, unsuc-
cessfully attempt to induce the receiver herein to consent to the
allowance of said Gilliam's claim for $49,682 for unearned renewal
commissions, a claim which it is the duty of said receiver to contest
because said claim is as this defendant is advised and states, entirely
unfounded and unenforceable; that said Gilliam is now endeavoring
by virtue of these proceedings, to make a personal profit thereby;
that said Gilliam pretends to be secretary and treasurer of a certain
corporation which publishes a monthly magazine at Minneapolis,
Minnesota, known by the name of "The United Banker & Investor;"

that said Gilliam is endeavoring to secure from thousands of the contract-holders of this defendant, subscribers to his said pretended magazine, by sending broadcast to said contract-holders circulars and articles stating that said Gilliam has instituted certain proceedings in said West Virginia Court, which will increase the value of the claims of contract-holders by 100 per cent., and that the Chicago papers have not seen fit to publish any details of his said actions and proceedings, and that in order that the contract-holders may be fully advised they should subscribe for "The United Banker & Investor," which would thereafter contain full accounts of all proceedings in said American Guaranty Company case, and which would be sent to subscribers for $1.50 per year, and subscription blanks to that effect have been enclosed in said circulars; that said "The United Banker & Investor" is the personal venture of said Gilliam, and his purpose in instituting proceedings in West Virginia is to make capital out of the same, in order that he may secure an increased subscrip-
417 tion list to his said publication; a copy of the circular so being sent by said Gilliam to contract-holders of this defendant is hereto attached and marked Exhibit "B," and by express reference thereto made a part hereof.

This defendant further represents and says that said W. R. Gilliam had for many months prior to the filing of his said petition in said Circuit Court of Kanawha County, full knowledge of all the proceedings in this Court, and to the best of the knowledge of this defendant ever since the appointment of the receiver herein; that said Gilliam has been guilty of laches and is estopped from in any way questioning the proceedings in this court.

This defendant further represents and shows that said Gilliam has expressly assented to, acquiesced in, submitted to and invoked the jurisdiction of this Honorable Court by filing his said claims herein against said Guaranty Company; that one of said claims of said Gilliam filed herein was signed by said Gilliam and by F. W. Houghton, of Milwaukee, Wisconsin, and George B. Edgerton, of St. Paul, Minnesota, as his attorneys; that said Houghton and said Edgerton are the same attorneys who filed the intervening petition on behalf of said Gilliam in the Circuit Court of Kanawha County, West Virginia, and that said Houghton and said Edgerton are the same attorneys now appearing herein as solicitors for Edwin M. Keatley, the petitioner herein.

This defendant respectfully represents unto this Honorable Court that it has jurisdiction in the premises and prays that the intervening petition of Edwin M. Keatley be denied.

[SEAL.] AMERICAN GUARANTY COMPANY OF CHICAGO,
By LEWIS W. PITCHER, *Secretary.*

418 STATE OF ILLINOIS,
County of Cook, ss:

L. W. Pitcher, being first duly sworn, upon oath deposes and says that he is the secretary of the American Guaranty Company of Chi-

cago, and is the duly authorized agent in this behalf; that he has read the above and foregoing answer and knows the contents thereof, and that said answer is true in substance and in fact, except as the allegations therein upon information and belief, and as such allegations he believes them to be true.

LEWIS W. PITCHER.

Subscribed and sworn to before me, this 26th day of October, A. D. 1909.

[SEAL.] FRANCIS E. MATTHEWS,
Notary Public.

419 STATE OF ILLINOIS,
County of Cook, ss:

Hal C. Bangs, being first duly sworn upon oath deposes and says that the allegations of the above and foregoing answer so far as they relate to him are true in substance and in fact.

HAL C. BANGS.

Subscribed and sworn to before me, a notary public, this 26th day of October, 1909.

[SEAL.] DAVID F. ROSENTHAL,
Notary Public.

420 EXHIBIT A.

Copy.

STATE OF WEST VIRGINIA,
Kanawha County, ss:

In the Circuit Court of Kanawha County.

No. 2019½.

CARRIE REBECCA FUREY et al.
vs.
AMERICAN GUARANTY COMPANY et al.

Now comes said defendant, American Guaranty Company, and for answer to the petition of W. R. Gilliam, shows and represents as follows:

This defendant admits the allegations of said petition with reference to its incorporation, and that its principal administrative offices have always been in the City of Chicago.

This defendant neither admits nor denies that its transactions have been carried on upon a profitable basis, and neither admits nor denies that said petitioner is the owner and holder of five (5) written contracts issued by it, said defendant, but asks for strict proof thereof.

This defendant denies that said petitioner, other than as a contract-holder (if he be such holder) is a creditor of this defendant, and also denies that said petitioner represents, or is duly au-
421 thorized to represent, eighty-six (86) other contract holders of this defendant.

This defendant neither admits nor denies that said petitioner was a co-partner of one F. L. Morgan, of St. Paul, Minnesota, under the firm name of Morgan & Gilliam, and that such co-partners were general agents of this defendant and district managers of this defendant for the State of Minnesota under certain contracts between said co-partners and this defendant, but asks for strict proof thereof.

This defendant denies that at the time the decree of dissolution was entered herein on the 1st day of February, 1909, said petitioner was entitled to renewal commissions on certain outstanding contracts of the defendant, or that each of said contract-holders would have continued to pay renewal premiums to said American Guaranty Company had the decree of dissolution not been entered herein, and this defendant denies that said petitioner is a creditor of the defendant for the sum of $49,682.00, or any other sum, except as aforesaid.

This defendant neither admits nor denies each and all of the allegations of said petition as to the terms of the various contracts issued by it, but insofar as the same may be material asks for strict proof thereof.

This defendant denies that Charles L. Furey controlled and directed the business of this defendant, and that the other officers, and members of the Board of Directors were merely dummy directors, carrying out the plans and policies dictated by said Furey.

This defendant neither admits nor denies the allegations of said petition as to the extent of business of this defendant, or as to the officers and directors of said company, but asks for strict proof thereof.

422 This defendant admits that it kept on deposit with the Royal Trust Company of Chicago, Illinois, according to the terms of its contracts, a large sum of money in securities, and this defendant says that since the appointment of a receiver for it by the United States Circuit Court in and for the Northern District of Illinois, said fund has, under order of said court, been turned over by said Royal Trust Company to said receiver.

This defendant neither admits nor denies the averments of said petition as therein alleged as to the ownership of shares of stock of this defendant, and as to the names of the officers and board of Directors of this defendant, or as to the ownership of shares of stock of this defendant by members of said Board of Directors, but demands strict proof thereof.

This defendant denies each and all of the allegations of said petition as to any and all conspiracy and confederation of the complainants herein, Carrie Rebecca Furey, Caroline La Tour Furey, Frederick M. Steele, L. M. Pitcher and J. L. Bigelow, and this defendant denies that the proceedings referred to in said petition as having taken place in the United States Circuit Court in and for the North-

ern District of Illinois, Eastern Division thereof, were in violation of the judgment and decree of dissolution heretofore entered herein by this court.

This defendant denies that at the time of the appointment of the receiver in said United States Circuit Court in and for the Northern District of Illinois, Eastern Division thereof, this court had jurisdiction and control over all the assets and property of this de-
423 fendant, and that the receiver so appointed by this court is the only person competent to take over any of the assets or property of said corporation without the State of West Virginia.

This defendant further denies the allegations in said petition that said Federal Court did not acquire, and never had jurisdiction of this defendant, or of the subject-matter of the action and proceedings in said United States Circuit Court, but on the contrary expressly alleges that said United States Circuit Court had and now has lawful, full and complete jurisdiction of this defendant, and of the subject-matter of the proceedings in said court.

This defendant denies that said petitioner is entitled to any of the relief prayed for in his said petition, and in support thereof further represents and shows unto this court as follows:

1. That on February 1, 1909, this court entered a decree dissolving said American Guaranty Company of Chicago, a corporation organized under the laws of the State of West Virginia, and appointed V. L. Black, of Charleston, West Virginia, receiver

"of all and singular the property and assets of the American Guaranty Company of every description, within the jurisdiction of this court, to have and to hold the same under the orders and direction of this court;"

and in and by said order it was further provided that

"the receiver is hereby directed to take all such steps as may be necessary to secure the property of the American Guaranty Company within the jurisdiction of this court, and to apply to this court for any and such further directions as to him may seem necessary;"

that on February 1, 1909, said V. L. Black qualified herein as
424 receiver under and in accordance with said decree.

2. That on February 2, 1909, there was filed in the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof, a bill of complaint by Carrie Rebecca Furey, Executrix of the last will and testament of Charles La Tour Furey, deceased, and also in her own right, and Caroline La Tour Furey, against said American Guaranty Company of Chicago; that in and by said bill it was set up that on February 1, 1909, in accordance with the statutes of the State of West Virginia, authorizing the same, a bill in chancery was filed in the Circuit Court of Kanawha County, West Virginia, praying that the court decree a dissolution of said Guaranty Company, and that in said bill so filed the other stockholders of said company duly intervened and joined as plaintiffs, and joined in the allegations and prayer of said bill, and that said

American Guaranty Company duly entered its appearance to said bill, and that on February 1, 1909, said Circuit Court of Kanawha County, having full jurisdiction of all the parties to and subject matter of said bill, entered a decree dissolving said American Guaranty Company of Chicago, and also appointed a receiver, who had duly qualified as such, of all of said American Guaranty Company's assets and effects located within the State of West Virginia; and that in consequence of the entry of said decree of dissolution, said American Guaranty Company of Chicago had become a trustee for its creditors and stockholders, of all its property, assets and effects, and that the receiver so, as aforesaid, appointed by said Circuit Court of
425 Kanawha County, had no jurisdiction outside of the State of West Virginia, to collect, or enforce collection of all or any of said property, assets and effects; that all of said property, assets and effects, except some nominal amounts held by some few banks in progress of collection, were located within the City of Chicago, and within the jurisdiction of said United States Circuit Court; that some of the holders of contracts of said American Guaranty Company threatened, as the orators in said bill of complaint were informed and believed, and so stated the fact to be, that they would commence suits by attachment or otherwise, against said American Guaranty Company and levy upon its property, assets and effects so situated in the State of Illinois, and that by means of such attachments, priority would be secured by some of the contract-holders over others, and that interminable, complicated and costly litigation would ensue, and the property, assets and effects of said American Guaranty Company would be wasted and destroyed to such a degree as to make the same utterly inadequate and insufficient, unless such property, assets and effects were taken possession of by a receiver, to be appointed by said United States Circuit Court to conserve and distribute the estate of said American Guaranty Company among those entitled thereto; that the defendant, American Guaranty Company, on February 2, 1909, duly entered its appearance to said bill of complaint and confessed each and all of the allegations contained therein to be true, and consented to the appointment forthwith, by said United States Circuit Court, of a receiver of all the property, assets and effects of every description of said American Guaranty Company; that
426 on said date Lewis M. Pitcher and James L. Bigelow, the owners respectively of Two hundred and sixty (260) and One Hundred (100) shares of the capital stock of said American Guaranty Company, likewise entered their appearance in said cause, and consented to the granting of the relief prayed for in said bill of complaint, to the appointment of a receiver of all the property, assets and effects of every description of said American Guaranty Company of Chicago. A true copy of said bill of complaint and of the appearances and consents of said American Guaranty Company and Lewis W. Pitcher and James L. Bigelow is herewith attached, and marked Exhibit "A", and by express reference thereto made a part hereof; that on February 2, 1909 said Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof, in accordance with the prayer of said bill of com-

plaint, together with the exhibits in support thereof, and the answer of said American Guaranty Company of Chicago confessing the allegations contained in said bill of complaint to be true, ordered that Edwin A. Potter, of Chicago, Illinois, be appointed receiver of said court of all and singular the property of said American Guaranty Company of Chicago of every description, and of all moneys, claims in action, credits, bonds, stocks and other assets, of every kind and of all other property, real, personal and mixed, held or possessed by said company, or to which said company is entitled, or in which it has any interest, to have and to hold the same as an officer of, and under the orders and directions of said court; that in and by said order said receiver was authorized and directed to take immediate possession of all and singular the property, assets and effects
427 described in said order, and each and every of the officers, directors, agents and employés of said American Guaranty Company of Chicago, and all other individuals, firms and corporations were required and commanded, on demand of said receiver, to turn over and deliver to said receiver any and all property, assets and effects of every kind and description, books, papers and vouchers, under their or any of their control, belonging to, or to which said American Guaranty Company of Chicago was entitled, or in which it had any interest. And in and by said order it was further directed that

"said American Guaranty Company of Chicago and its officers, are hereby directed immediately to execute and deliver to said receiver, a deed or deeds of all real estate now owned or possessed by said company, and transfers and assignments of all the property, assets and effects of said company;"

and that in and by said order it was further ordered that all creditors and contract-holders of said American Guaranty Company of Chicago, were thereby enjoined from in any way intermeddling, by suit or otherwise, with all or any of the property, assets and effects directed by said order to be turned over to said receiver, and from interfering with, or disposing of all or any of said property, assets and effects of said American Guaranty Company of Chicago in any way, except to transfer, convey and turn over the same to said receiver; that said decree further approved the bond of said receiver presented in open court; that for greater certainty a true copy of said decree is herewith attached, and marked "Exhibit B," and by express reference thereto made a part hereof; that on February 2, 1909, said Edwin A. Potter, duly accepted said appointment as receiver, and duly qualified as such.

3. That under and in accordance with the express direction of said decree of said United States Circuit Court for the Northern
428 District of Illinois, Eastern Division thereof, said American Guaranty Company, on February 3, 1909, executed and delivered a due and proper instrument of conveyance, whereby it conveyed and quit-claimed, transferred and assigned to said Edwin A. Potter, as receiver of said American Guaranty Company, all right,

title, claim, interest and demand whatsoever of said American Guaranty Company to

"all and singular the property of said American Guaranty Company of Chicago, of every description, and all moneys, claims in action, credits, bonds, stocks and other assets of every kind, and all other property, real, personal and mixed, held or possessed by said American Guaranty Company of Chicago, or to which said company was entitled, or in which it had any interest, and all books, papers and vouchers of said company,"

a true copy of which instrument of conveyance is herewith attached, and marked exhibit "C" and by express reference thereto made a part hereof.

That on or about February 3rd, 1909, and long prior to the entry of the order herein on September 22nd, 1909, all of said property of every kind referred to in said order of the Federal Court and in said deed, were duly delivered to said Potter, as receiver, and are now in the possession and control of such receiver under the directions of said Federal Court; that in consequence of said conveyance under the orders of said United States Circuit Court it is impossible for your defendant to comply with the order entered herein on September 22nd, 1909 requiring this defendant to execute a deed or transfer to the receiver therein named; and that the commissioner named in said order has no power to make and execute a deed or transfer of the property of this defendant which has heretofore been transferred and conveyed to the receiver appointed by the United States Circuit Court in and for the Northern District of Illinois.

429 4. That on February 4, 1909, said Edwin A. Potter receiver of said American Guaranty Company, moved said United States Circuit Court that said case of Furey vs. American Guaranty Company of Chicago, pending in said United States Circuit Court, be referred to a Master in Chancery of said court, to hear and take from time to time, the testimony of such person or persons as the receiver therein might indicate, for the purpose of enabling said receiver to investigate into and ascertain the amount, character, kind and locality of all and singular the property, assets and effects of said American Guaranty Company of Chicago; and for the purpose of enabling said receiver to ascertain the names and addresses of all the creditors and contract-holders of said company, and the amount or amounts due or owing to all of them respectively; that in accordance with said motion of February 4, 1909, said United States Circuit Court ordered that said case be referred to James S. Hopkins, one of the Masters in Chancery of said court, to hear and take from time to time, the testimony of such person or persons as the receiver therein might indicate to said Master, for the purpose of enabling said receiver to investigate into and ascertain the amount, character, kind and locality of all and singular the property, assets and effects of said American Guaranty Company of Chicago, of every description, and for the purpose of enabling said receiver to ascertain the names and addresses of all creditors and contract-holders of said com-

pany, and the amount or amounts due and owing to all of them respectively; and also for the purpose of enabling said receiver to ascertain the names and residences of all the stock-holders of said company, and the amount of stock owned or held by them.

430 A true copy of said order is herewith attached, and marked Exhibit "D", and by express reference thereto made a part hereof.

5. That on February 5, 1909, said Edwin A. Potter, filed in said United States Circuit Court a petition asking for the instruction of said court with reference to certain remittances received from contract-holders of said American Guaranty Company, said remittances having been received in payment of amounts due on contracts after dissolution proceedings instituted in this court had been determined upon, and received at the office of said Company on February 1, 1909, and — days thereafter; and by order entered February 5, 1909, said United States Circuit Court directed said receiver to return said remittances to the senders thereof and said receiver Potter has complied with such order; that on February 8, 1909, there was filed in said United States Circuit Court the petition of A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, representing that they constituted the contract-holders' Committee of said American Guaranty Company, and praying that they might be allowed to intervene in said cause in said United States Circuit Court, and be made parties thereto, and in accordance with the prayer of said petition of February 8, 1909, said United States Circuit Court granted leave to said A. E. Cross, et al., to file said petition of intervention and made said A. E. Cross, et al., parties as intervenors therein. A true copy of said order is herewith attached and marked exhibit "E" and by express reference thereto made a part hereof.

431 6. That on February 13, 1909, said Edwin A. Potter filed in said United States Circuit Court a petition setting forth that certain cash and securities were held by said Royal Trust Company under and in accordance with the contract between said American Guaranty Company and said Royal Trust Company, which said Royal Trust Company had refused and declined to turn over to said receiver; that said cash and securities were of the aggregate face value of to-wit: $556,719.50, and were deposited with said Royal Trust Company as a reserve or deposit for the benefit of certain of the contract-holders of said American Guaranty Company, and praying that said Royal Trust Company be made a party defendant to said petition, and for a rule to answer thereto, and be directed to turn over to said receiver all the property, assets and funds so held by said Royal Trust Company under the agreement between it and said American Guaranty Company, and that said property, assets and funds so turned over to said receiver, be held and distributed by him in accordance with the rights of any and all persons in and to said property, assets and funds; that by order entered by the United States Circuit Court on February 13, 1909, said Royal Trust Company was ordered to answer said petition by February 17, 1909, and the hearing of said petition was set for February 19, 1909; that on February 17, 1909, said Royal Trust Company filed a demurrer to said petition, and on February 19, 1909, said Royal Trust Com-

pany by leave of court first had and obtained, filed an intervening petition in said cause praying that it might be made defendant to the original bill filed therein, and have leave to ask the aid and direction of said United States Circuit Court from time to time, in and about the distribution of said property, assets and securi-
432 ties so held by it among the parties entitled to share therein; that on February 19, 1909 by leave of court first had and obtained an intervening petition was filed therein by A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting a Committee of contract-holders of said American Guaranty Company of Chicago, whereby said Contract-holders' Committee joined in the prayer of the petition of said Edwin A. Potter as receiver against said Royal Trust Company, and prayed that said Royal Trust Company be directed to turn over to said Edwin A. Potter as receiver, all of the property, assets and funds held by said Royal Trust Company under the agreement between it and said American Guaranty Company, and that said property, assets and funds when so turned over to said receiver should be held by him separate and distinct and should be distributed by him in accordance with the rights of any and all persons in and to said property, assets and funds; that extended argument was heard by said United States Circuit Court upon said petition of said Edwin A. Potter as receiver, and upon the demurrer of said Royal Trust Company to said petition, and upon the intervening petition of said Contract-holders' Committee, and that on February 27, 1909, said United States Circuit Court found that the relief sought for in said petition of said receiver against said Royal Trust Company should be granted, and overruled the demurrer of said Royal Trust Company, and granted leave to said Royal Trust Company to answer said petition of said receiver. A true copy of said order is hereto attached and marked Exhibit "F" and by express reference thereto made a part hereof; that on March 6, 1909, there was filed in said United States Circuit Court
433 the petition of A. E. Cross, et al., constituting a committee of contract-holders of said American Guaranty Company of Chicago, for an order requiring said Royal Trust Company to turn over to said Edwin A. Potter, receiver, the property, assets and funds now in its hands, and an order directing said receiver to hold said property as a separate fund; that on March 6, 1909 there was filed in said United States Circuit Court the answer of the Royal Trust Company to said petition of Edwin A. Potter, receiver; that on March 6, 1909 the replication of said Edwin A. Potter, receiver to said American Guaranty Company was filed in said United States Circuit Court; that said petition of said Edwin A. Potter, receiver, and the petition of said Contract-holders' Committee, and the answer of said Royal Trust Company, was fully heard by said United States Circuit Court, and on March 6, 1909, an order was entered therein that said Royal Trust Company should within ten (10) days turn over to said receiver all of the property, assets and funds held by said Royal Trust Company under the agreement between it and said American Guaranty Company, and that when said Receiver had acquired possession of said property, assets and funds he should hold and in due course from time to time collect and convert said prop-

erty, assets and funds into cash, and hold said property, assets and funds and the proceeds thereof, as a separate and distinct fund subject to such claims and trusts as said United States Circuit Court may hereafter find were impressed upon said property, assets and funds, and the proceeds thereof, by said agreement between the Royal Trust Company and said American Guaranty Company, by any
434 contracts issued by said American Guaranty Company, and it was thereby further ordered that any and all rights, claims and demands of any and all contract-holders of said American Guaranty Company, upon, in, to or against said property, assets and funds while the same were held by said Royal Trust Company should continue against said property, assets and funds and the proceeds thereof during the time that they should be held by or in the possession of said receiver, and it was further directed that upon the delivery by said Royal Trust Company of said property, assets and funds to the said Edwin A. Potter, receiver the duties and obligations of said Royal Trust Company with respect thereto should thereupon pass to said Receiver, and that said Royal Trust Company should be relieved of all further duties or obligations as to said property, assets and funds, and the proceeds thereof, or as to any of the beneficiaries thereof; that a true copy of said order is hereto attached and marked exhibit "G" and by express reference thereto made a part hereof; that on March 9, 1909, in accordance with said order said Royal Trust Company turned over and delivered to said Edwin A. Potter, receiver the funds and securities so held by it aggregating to-wit: the sum of $566,719.50.

7. That on February 19, 1909, said Edwin A. Potter, receiver, filed a petition in said cause asking leave of said court to cancel certain leases of local offices of said American Guaranty Company at various cities in the United States, and that in accordance with the prayer of said petition on February 19, 1909, said receiver was given leave to cancel and determine said leases and to adjust the liabilities of said American Guaranty Company, whatever the same
435 might be, upon such leases, and authorizing said receiver to dispose of any and all furniture and fixtures in said local offices, and said receiver Potter has performed and complied with said order.

8. That on March 26, 1909, said Edwin A. Potter, receiver, filed in said United States Circuit Court an inventory of assets and schedule of liabilities of said American Guaranty Company, a true copy of which said inventory of assets and schedule of liabilities is hereto attached and marked exhibit "H" and by express reference thereto made a part hereof. That on or about March 26, 1909, a copy of said inventory of assets and schedule of liabilities was mailed by said Receiver to each and every contract-holder of said American Guaranty Company; that on May 26, 1909, on motion of said Edwin A. Potter, receiver therein, said United States Circuit Court entered an order that all contract-holders and all other persons having claims against said American Guaranty Company of Chicago be and they were directed to present and file such claims on or before the 1st day of September, 1909, with said James S. Hopkins, one of the Masters

in Chancery of said court, to whom the cause had theretofore been referred, in such manner and form as said Master, subject to the orders of said court, should direct; and it was further ordered that any contract-holder or creditor or claimant of said American Guaranty Company failing to file his claim against said American Guaranty Company with said Master on or before the 1st day of September, 1909, should forever be barred and excluded except for good cause shown to said court, from participating in any way in the property,
assets and funds of said American Guaranty Company under
436 the control or administration of said court. Said Master was
further directed to give public notice of the filing of claims and the time within which the same must be filed, by publishing said notice in a daily newspaper of general circulation published in the City of Chicago, at least once in each week for four successive weeks, the first publication thereof to be prior to the 1st day of June, 1909, and that such notice should advise the claimants that unless proof of claim should be filed with said Master on or before the 1st day of September, 1909, that they would be excluded from participating in any way in the property, assets and funds of said American Guaranty Company under the control or administration of said court. Said Master was further directed to mail a copy of such notice to each and every contract-holder and creditor and claimant of said American Guaranty Company appearing as such on the books of said American Guaranty Company; it was further directed in and by said order that all proofs of claim filed with said Master by any person holding a contract of said American Guaranty Company should show the total amount paid to said American Guaranty Company by said contract-holder taking into consideration all transactions with said American Guaranty Company, and the amounts of all loans and advances made by said American Guaranty Company upon such contract or otherwise, and the total dividends or other payments received thereon, and that such proofs of claim should state what, if any, prior or preferential right or demand said claimants asserted to participate or share in any separate and distinct fund under the control or administration of said court, and that such proofs of claim should
have attached thereto the contract upon which the claim was
437 based, unless the contract had been theretofore delivered to
said American Guaranty Company, in which event the proof of claim should so state.

It was further directed in and by said order that when the proofs of claim had been presented to said Master he should pass upon the same, and cause the same to be properly audited, and ascertain what part of said claims are valid, and determine what amounts should be allowed thereon, and what priorities, preferences, equities, if any, or participation in any separate fund should be accorded said claimants and that as soon as convenient after the 1st day of September, 1909, said Master should report to said court all claims allowed by him, and all claims disallowed by him, and his findings with respect to such priorities, preferences and equities, if any, and of his actions thereunder with respect to each and every claim presented to and passed

upon by him, together with such other matters as might be necessary to enable said court to obtain a correct understanding of his action in respect thereto. In and by said order said Master was ordered to appoint an accountant at reasonable expense, and employ such clerical force and provide the necessary books, forms and stationery as to him might seem necessary for the proper consideration, audit, determination and disposition of all said claims, and all of said matters pertaining thereto. A true copy of said order is hereto attached and marked exhibit "I" and by express reference thereto made a part hereof.

9. That under and in accordance with said order of said United States Circuit Court entered on May 26, 1909, said James S. Hopkins, Master in Chancery of said court, caused a notice to
438 contract-holders and all other persons having claims against the American Guaranty Company of Chicago to file proofs of claim with said James S. Hopkins, Master in Chancery, to be published once each week for four successive weeks in the Chicago Daily Tribune, a copy of which notice is hereto attached and marked exhibit "J," and by express reference thereto made a part hereof. That said James S. Hopkins, Master in Chancery, on or about May 29, 1909, likewise caused a similar notice to be mailed to each and every contract-holder and all other persons having claims against said American Guaranty Company as appeared on the books of said Company; that a copy of said notice is hereto attached and marked exhibit "K," and by express reference thereto made a part hereof.

10. That in accordance with the terms of said order of said United States Circuit Court entered on May 26, 1909, said James S. Hopkins, Master in Chancery, prescribed a form of proof of claim, upon which form all proofs of claim against the American Guaranty Company should be made and filed with said Master in Chancery, a true copy of said proof of claim is herewith attached and marked exhibit "L," and by express reference thereto made a part hereof.

That under and in accordance with the terms of said order, and pursuant to the notices published by said Master in Chancery under the terms of said order, and the notices mailed to each and every stockholder and creditor of said American Guaranty Company, so far as the same could be ascertained from the books of said American Guaranty Company, there had been filed on September 1, 1909, with said Master, in the cause pending in said United States Cir-
439 cuit Court in and for the Northern District of Illinois, Eastern Division thereof, 6808 proofs of claim against said American Guaranty Company; that 6587 of said claims were based on separate contracts of said American Guaranty Company, and 221 miscellaneous claims as creditors of American Guaranty Company; that since September 1, 1909, and up to October 1, 1909, there have been sent to said Master in Chancery 77 additional claims against said American Guaranty Company; that said claims are received by said Master, but are not marked "filed" by him; that said E. A. Potter, receiver, has given out that he will apply to said United States Circuit Court for an order from said court allowing all claims received by said Mas-

ter since September 1, 1909, to be filed with said Master *nunc pro tunc* as of September 1, 1909, and that said claims may share in the property, assets and funds of said American Guaranty Company in the same manner as if they had been filed with said Master on or prior to September 1, 1909.

11. That said contract-holders' committee, hereinbefore referred to, consisting of Albert E. Cross, Joseph K. Leaming, L. K. Torbet and A. E. Taylor, of Chicago, Illinois, represent as attorneys in fact 5277 contract-holders of said American Guaranty Company; that said contract-holders' committee has obtained signed agreements from said 5277 contract-holders of said American Guaranty Company, by which said committee is the constituted true and lawful agents and attorneys in fact of said contract-holders to act in their interests, and to do such acts and things, and adopt any and all measures, through court proceedings or otherwise, in such manner and upon such terms as said committee may in its discretion deem proper or neces-
440 sary to preserve, protect and enforce the rights of said contract-holders; for greater certainty a copy of said contract-holders' agreement is herewith attached, and marked Exhibit "M" and by express reference thereto made a part hereof; that said contract-holders' committee has filed with said Master in Chancery 5277 proofs of claim of contract-holders of said American Guaranty Company represented by it.

12. That the petitioner herein, W. R. Gilliam, has filed with James S. Hopkins, Master in Chancery of said United States Circuit Court, in said cause pending in said United States Circuit Court, his proof of claims based upon the following contracts of said American Guaranty Company held by him: A.-6332; A-1149; A-119; A-12351; B-50350, and which are the same contracts referred to in said Gilliam's intervening petition herein; that said proofs of claim were presented to and filed with said James S. Hopkins, Master in Chancery on the 24th and 28th days of August, 1909, and the first day of September, 1909, and said claims were marked and designated "Claims No. A 2519; A 3045; M 174; M 181; C. 118," and marked "filed," on the dates aforesaid by said James S. Hopkins, Master in Chancery, of said United States Circuit Court in and for the Northern District of Illinois, Eastern Division thereof; that said petitioner, W. R. Gilliam, on August 31, 1909, by George B. Edgerton and F. B. Houghton, his attorneys, filed with said James S. Hopkins, Master in Chancery of said United States Circuit Court, in and for the Northern District of Illinois, Eastern Division thereof, his proof of claim for $49,682, against said American Guaranty Com-
441 pany based upon an alleged renewal agency commission contract between said W. R. Gilliam and said defendant, American Guaranty Company; that said claim for $49,682. is the identical claim referred to in said Gilliam's intervening petition herein; that said W. R. Gilliam by filing his said proofs of claim with said Master in Chancery Hopkins, has submitted himself and consented to the jurisdiction of said United States Circuit Court, in and for the Northern District of Illinois, Eastern Division thereof, in the said cause pending therein, wherein said E. A. Potter was appointed re-

ceiver of any and all property, assets and funds of said American Guaranty Company; that said W. R. Gilliam also executed two contract-holders' agreements with the contract-holders' committee aforesaid, in and by which he appointed said contract-holders' committee his attorneys in fact, to represent him in any and all court proceedings; that said contract-holders' agreements were executed by said W. R. Gilliam on or about March 31, 1909, and true copies thereof are herewith attached and marked Exhibits "N and O," and by express reference thereto made a part hereof.

13. Defendant further represents and shows that said Edwin A. Potter, receiver under and in accordance with the order of said United States Circuit Court, took and now has possession of all the property and assets of said American Guaranty Company of Chicago; that all the assets and properties, bills of account, vouchers, etc., of said American Guaranty Company were located at its office in the City of Chicago, State of Illinois, and that the same were taken possession of and now are in the possession and control of said Edwin A. Potter, receiver, the receiver appointed by said United
442 States Circuit Court. That under and in accordance with the order of said United States Circuit Court said Edwin A. Potter, receiver, has converted the securities and assets of said American Guaranty Company into cash as rapidly as possible; said receiver now holds all the property and assets (and the proceeds thereof) of said American Guaranty Company under the order and direction of said United States Circuit Court.

14. That said United States Circuit Court has been proceeding in due and orderly course of administration of the assets, property and funds of said American Guaranty Company, and that large expenses have been incurred in the due and proper administration thereof; that said court is a court of competent jurisdiction, fully empowered and capable of fully, justly and equitably administering and distributing the property, assets and funds of said American Guaranty Company among those equitably entitled thereto; that it appears in and by the report heretofore filed herein on June 15, 1909, by V. L. Black, the receiver appointed by this court on February 1, 1909, that there are no property, assets and funds of said American Guaranty Company within the state of West Virginia; that all the assets, property and funds of said American Guaranty Company are now in the possession and control of said Edwin A. Potter, the receiver, subject to the orders and directions of said United States Circuit Court for the Northern District of Illinois, Eastern Division thereof; that if the order heretofore entered herein on September 22, 1909, is permitted to remain in full force and effect it will lead to interminable litigation which will result in dissipating the assets and funds of said American Guaranty
443 Company now in the hands of said E. A. Potter, the receiver appointed by said United States Circuit Court, all to the prejudice and harm of the creditors and contract-holders of said American Guaranty Company; that the order heretofore entered herein on September 22, 1909 was entered by the court without a full knowledge of all the facts and circumstances and that no oppor-

tunity was permitted for the filing of an answer to said petition of W. R. Gilliam, prior to the entry of said order of September 22, 1909; that this Honorable Court should now vacate and set aside the said order heretofore entered on September 22, 1909, and this defendant prays that this Honorable Court shall treat and consider this answer to said petition of said W. R. Gilliam not only as an answer to said petition, but also as a motion to vacate and set aside said order entered herein on September 22, 1909.

[CORPORATE SEAL.]

AMERICAN GUARANTY COMPANY OF CHICAGO,

(Sgd.) By LEWIS W. PITCHER, *Secretary.*

444 & 445 EXHIBIT A.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and Also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof:

Carrie Rebecca Furey, an executrix of the last Will and Testament of Charles La Tour Furey, deceased, and also in her own right, and Caroline La Tour Furey, complainants, bring this, their bill of complaint against the American Guaranty Company of Chicago, hereinafter called the Guaranty Company, defendant, and thereupon your orators complain and say:

1. That said Charles La Tour Furey departed this life on or about November 29th, 1908, in the City of Chicago, County of Cook and State of Illinois; that at the time of his death and for many years continuously theretofore, he was a citizen of said State of Illinois and a resident of said city; that said Carrie Rebecca Furey is the widow, and said Caroline La Tour Furey is the daughter of said Charles La Tour Furey, deceased; that at the time of the death of said Charles La Tour Furey, and for many years continuously theretofore and continuously since, your orators were, have been and now are citizens of said State of Illinois, and residents of said city of Chicago; that said American Guaranty Company of Chicago, is a corporation duly organized and doing business under and by virtue of the laws of the State of West Virginia, and is not incorporated under the laws of any other state, territory or

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country; that it is a citizen of the State of West Virginia and of no other state, territory or country; that it has heretofore duly complied with the laws of the State of Illinois governing foreign corporations and is duly licensed and authorized to do business in said State; that the matters in dispute in this cause exceed, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000).

2. That said Charles La Tour Furey left a last will and testament, which was duly admitted to probate in the Probate Court of said Cook County, Illinois, on December 8, 1908; that on said date letters testamentary duly issued out of said probate Court to said Carrie Rebecca Furey, as executrix of said last will and testament, and on said date she duly qualified as such executrix and since said date has continued to and still is acting as such executrix; that said letters testamentary are still in full force and effect, unrevoked and unappealed from; that in and by said last will and testament, one James L. Bigelow was named as an executor thereof, but that prior to said December 8, 1908, said Bigelow, in writing duly filed in said Probate Court, duly renounced his said appointment and refused to act as such executor; that a true and correct copy of said last will and testament is hereto attached, marked Exhibit "A" and by express reference thereto made part hereof.

3. That in and by said last will and testament, said Charles La Tour Furey, deceased, devised to his widow, said Carrie Rebecca Furey, and to his daughter, said Caroline La Tour Furey, all
447 of his real estate and personal property of every description of said decedent, to have and to hold the same, share and share alike, absolutely in their own right; that his said widow and his said daughter, who is now of the age of nineteen years, were and are the sole and only heirs at law of said decedent.

4. That at the time of his death said Charles La Tour Furey was the absolute owner of 602 shares of the capital stock, of the par value of one hundred dollars ($100) each, of said Guaranty Company and that the absolute title to said 602 shares of stock is now in your orator, Carrie Rebecca Furey, as executrix, as aforesaid, solely for the benefit of herself and her said daughter, Caroline La Tour Furey, and said Carrie Rebecca Furey, as executrix as aforesaid, now has in her possession all of the stock certificates representing said 602 shares of the capital stock, which certificates were duly issued by said Guaranty Company to said decedent long prior to his death; that said 602 shares of stock are fully paid up and non-assessable and are worth, to-wit: over sixty-two thousand dollars ($62,000).

5. That on or about March 10, 1906, said Guaranty Company duly entered into a contract with said Charles La Tour Furey, under and by the terms of which said Guaranty Company agreed to pay him certain commissions as compensation for services to be rendered by him to said Guaranty Company, which services were by him duly rendered and performed; that under and by the terms of said contract said Guaranty Company became and now is indebted to said Carrie Rebecca Furey, as executrix as aforesaid, in the sum of $14,798.42, which sum is now due and owing by said Guaranty Company to said executrix as such, for such services.

448 6. That said Guaranty Company was duly incorporated, by a certificate of incorporation, issued under the laws of West Virginia, on July 18, 1892, under the name of The American Investment Guaranty Company, with an authorized capital stock of $200,000., and with authority to increase the same to $1,000,000; that thereafter, on or about January 12, 1898, the name of said company was duly changed from that of The American Investment Guaranty Company to the American Guaranty Company of Chicago; that on April 13, 1901, the authorized capital stock of said Guaranty Company was duly reduced from 10,000 shares, of the par value of $100., to 5,000 shares of the par value of $100. each, and that since April 13, 1901, the authorized capital stock of said company has been $500,000; that said Guaranty Company was duly incorporated for a period expiring July 1, 1942, and one of the objects for which it was and is incorporated is to enter into contracts with individuals, firms and corporations, which are known as investment, service and income contracts, hereinafter more particularly referred to; that the principal office of said Guaranty Company, ever since its incorporation has been and is in the city of Charleston, in Kanawha County, in the State of West Virginia; that its administrative offices have been and now are in said City of Chicago; that a true and correct copy of said certificate of incorporation and of all amendments thereto is hereto attached, marked Exhibit "B" and by express reference thereto made part hereof.

7. That in the conduct of its said business said Guaranty Company has issued a large amount of said investment, service and income contracts; that it now has outstanding, in full force and effect, contracts of a total nominal or possible contingent value aggregating in amount, to-wit: $15,825,000., divided into, to-wit:

449 $3,254,000. of investment and service contracts and, to-wit: $12,571,000. income contracts; that said contracts respectively, vary from a minimum principal of $1,000. to a maximum principal of $10,000. upon the date of their maturity; that said contracts mature at periods of ten, fifteen and twenty years from their dates of issue; that the total cash or surrender value of all of said contracts is many millions of dollars less than their said nominal or contingent value; that there are to-wit: 6500 of said contracts now outstanding held by persons who live in various parts of the United States, Canada, and Mexico; that all of said contracts provide by their terms that the holders thereof shall pay to said Guaranty Company specified amounts in periodical installments, payable monthly, quarterly, semi-annually or annually, and further provide that default in making any of said periodical payments during the first two years of the life of said contracts shall result in a forfeiture thereof, and that after the lapse of said two years said contracts shall become non-forfeitable, but that defaults made subsequent to said two years shall result in either an exchange of the contract for one that is paid up, or a surrender thereof for a specified cash surrender value; that there are attached hereto specimen copies of said investment, service and income contracts, as Exhibits "C," "D" and "E" and which by express reference thereto are made part hereof.

8. That said investment and service contracts provide by their terms that as security for the redemption of the same, said Guaranty Company shall have and keep in trust, moneys and other securities to such an amount as shall at the time equal in the aggregate seventy-five per cent. of the cash value of said contracts, as shown by the schedules appended thereto, and that said income contracts, issued prior to 1906, contained similar terms, and said income contracts issued in 1906 and since, provide that the moneys and
450 other securities so be kept in trust shall be in an amount equal to the cash loan value specified in said income contracts, less the amount of any unpaid loans thereon; that pursuant to the provisions so contained in said contracts, said Guaranty Company did deposit and now has on deposit with the Royal Trust Company of Chicago, a corporation duly organized and doing business under and by virtue of the laws of Illinois, a fund consisting of cash and other securities aggregating over $450,000.; that in addition to said fund said Guaranty Company has assets, consisting of cash, securities bills receivable, loans to contract-holders and other assets that your orators estimate to be worth over $750,000.

9. That though the total authorized capital stock of said Guaranty Company is now $500,000, there was at the time of the death of said Charles La Tour Furey, and there now are issued and outstanding only 962 shares of said stock, of the par value of $100 each; that of said 962 shares, 602 shares belong, as aforesaid, to and are the property of your orators, as hereinbefore stated; that the remaining 360 shares belong, 260 thereof to Lewis W. Pitcher, and the other 100 shares to James L. Bigelow, respectively, who now and for many years continuously last past have been Secretary and Treasurer of said Guaranty Company; that the said 260 shares so belonging to said Pitcher are now, and since March 28, 1906, have continuously been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Pitcher to said Guaranty Company, contracted prior to the date last aforesaid; that the said 100 shares belonging to said Bigelow now are and continuously since March 24, 1905, have been in the possession of and held by said Guaranty Company as collateral security for a certain indebtedness of said Bigelow to said
451 Guaranty Company, contracted prior to the date last aforesaid.

10. That on or about January 11, 1899, said Charles La Tour Furey first became connected with said Guaranty Company, and on or about said date was elected Vice-president of said Guaranty Company, and so continued up to the time of his death, and during all of said time had the active management and control of the business of said Guaranty Company; that on June 23, 1903, at a meeting of the board of directors of said Guaranty Company, the following resolution was duly and unanimously adopted.

"Resolved, the Vice-president, by virtue of his office is hereby constituted Chairman of the Board of Directors and is to assume and perform all the duties of the President it being also understood

that the Vice-President shall take upon himself the duty of generally supervising all details and operation of the business."

That pursuant to said resolution, and in compliance therewith, said Charles La Tour Furey, as such Vice-president, did continuously since June 23, 1903, until the time of his death, act as Chairman of the Board of Directors of said Guaranty Company and assumed and performed all the duties of the President thereof, and took upon himself the duty of generally supervising all details and the operation of the business of said Guaranty Company; that said Charles La Tour Furey possessed great expert knowledge and ability in the kind of business in which said Guaranty Company was engaged as aforesaid, and by reason thereof he was put and continued in the practical control and management of said business, and was in such control at the time of his death; that when he first became such vice-president of said Company, the total outstanding contracts of said Guaranty Company was about $3,000,000., while at the time of his death the same aggregated about $15,825,000.; that such increase was due to his said expert knowledge and ability; that your orators and said Guaranty Company and its officers and
452 directors, have been unable to secure or agree upon a successor to said decedent; that your orators never had any business experience of any kind and that neither of them has the ability, qualification or willingness to conduct said business and neither one is willing to consent that the same shall be further conducted and carried on; that your orators and said Pitcher and Bigelow, together owning all of the issued capital stock of said Guaranty Company, as aforesaid, have concluded that it is to the best interests of said Company, and all of its contract-holders and stockholders, that said Company shall be dissolved and its business and affairs wound up, and its assets liquidated and distributed in accordance with the rights of those entitled thereto, that other than its obligations on said contracts, said Guaranty Company has no liabilities whatever except to a nominal amount for current expenses, and except that owing Carrie Rebecca Furey, as executrix as aforesaid, and to one or more agents for possible commissions; that said Guaranty Company has no liabilities of any kind in the State of West Virginia other than to forty-eight contract-holders, none of whose contracts has matured and upon none of which is said Guaranty Company in any way in default, and the total surrender or cash value of which does not exceed $9,751.44; that all of the property and effects of said Guaranty Company are in said City of Chicago, except a few cash balances in little more than nominal amounts due to said Guaranty Company from banks outside of Chicago, which have been the collecting agents of said Guaranty Company.

11. That on February 1, 1909, in accordance with the statutes of the State of West Virginia authorizing the same, a bill in chancery was filed in the Circuit Court of Kanawha County, West Virginia, in which the principal office or place of business of
453 said Guaranty Company is situated, praying that the court decree a dissolution of said Guaranty Company and to make

such other orders and decrees as justice and equity may require, and in said bill, so filed, said Pitcher and Bigelow duly intervened and joined as plaintiffs, and joined in the allegations and prayer of said bill; that said Guaranty Company duly entered its appearance to said bill; that on said February 1, 1909, said Circuit Court of Kanawha County, having full jurisdiction of all of the parties to and subject-matter of said bill, duly entered a decree dissolving said American Guaranty Company of Chicago, which decree is now in full force and effect, unmodified, unreversed and unappealed from; and also appointed a receiver, who has duly qualified as such, of all of said Guaranty Company's assets and effects located within said State of West Virginia; that a true copy of said proceedings in said Circuit Court of Kanawha County is herewith brought into court.

12. That in consequence of the entry of said decree of dissolution, said American Guaranty Company of Chicago has become a trustee, for its creditors and stockholders, of all of its property, assets and effects; that the receiver so as aforesaid appointed by said Circuit Court of Kanawha County has no jurisdiction outside of the State of West Virginia and has no authority or power outside of said State of West Virginia to collect or enforce collection of all or any of said property, assets and effects; that all of said property, assets and effects, as hereinbefore stated, except some nominal amounts held by some few banks in the progress of collec- are located within said city of Chicago and within the jurisdiction of this court; that it is necessary to ascertain what, if — is owing to any and all of said 6500 contract-holders, anything in said fund so on
454 deposit with said Royal Trust Company of Chicago shall be allotted or apportioned on any and all of said contracts; that the surrender value of said contracts is at least $1,000,000, and that some of the holders of said contracts threaten as your orators are informed and believe and state the fact to be that they will commence suits by attachment or otherwise against said Guaranty Company and levy upon its said property, assets and effect- so situated in said State of Illinois, and that by means of such attachments, priorities will be secured by some of the contract holders over others; that interminable, complicated and costly litigation will ensue and the property, assets and effects of said Guaranty Company will be wasted and destroyed to such a degree as to make the same utterly inadequate and insufficient, unless such property, assets and effects are taken possession of by a receiver to be appointed by this court to conserve and distribute the estate of said Guaranty Company among those entitled thereto.

13. That your orators file this, their bill of complaint, not only on behalf of themselves but also on behalf of all other stockholders of said Guaranty Company, and of all other creditors thereof who may ask and secure leave to intervene herein and become parties hereto.

In Consideration Whereof and for as much as your orators are remediless in the premises at or by the strict rules of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable.

To the end therefore, that the said American Guaranty Company

of Chicago, which is hereby made defendant to this bill of complaint, may, if it can, show unto your Honors why your orators should not have the relief hereby prayed; that a full, true and just account may be had and taken of all of the property, assets and effects of every description of said defendant; that all of its
455 creditors and contract-holders may be ascertained and the amount or amounts due or owing to all of them respectively; that all of its stockholders and the amount of the stock held or owned by them, respectively, may be ascertained that all of said credit-rs, contract-holders and stockholders be allowed to file their petitions, exhibiting their respective claims and demands and to prove the same according to the usual practice in this court; that distribution be made of all of its property, assets and effects, when converted into money, first among its creditors and contract-holders, as equity may required, and after satisfying all of its said creditors and contract holders, that the surplus remaining shall be distributed among its stockholders; that whatever funds, if any, may be found by this Honorable Court to be held in trust for all or any of said contract-holders shall be allotted and distributed by this court as equity may require; that a receiver may be appointed according to the course of practice in this court, and with the usual powers of receivers in like cases, of all of the property, assets and effects of every description of said defendant, and that said receiver be ordered and directed to convert said property, assets and effects into money at the earliest practicable moment; to collect all debts due said defendant, to bring such suits as may be necessary to accomplish that end, and to bring and defend all such suits as may be necessary to assert the rights and claims of said defendant in said property assets and effects, and to do all other acts necessary or proper to protect said property, assets and effects; that all individuals, firms, and corporations, including all of the officers, agents and employees of said defendant may be required and commanded, on demand of said receiver, to forthwith turn over and deliver to him any and all property, moneys, assets and effects, books, papers, vouchers and documents of every kind and description under their or any of their control which said defendant owns or is entitled to, or in which it has any interest; that any and all creditors and contract-
456 holders of said defendant, and any and all other individuals, firms and corporations be enjoined from in any way intermeddling by suit or otherwise with all or any of the property, assets and effects of said defendant, and that your Honors may make such other orders and decrees and grant your orators such further or other relief as the controlling circumstances in this case may require, and to equity, and to your Honors shall seem fit and proper.

May it please your Honors to grant unto your orators a writ of subpœna to be directed to the said American Guaranty Company of Chicago, thereby commanding it, at a certain time and under a certain penalty therein to be limited, to appear before this Honorable Court, and then and there full, true, direct and perfect answer make, but not under oath, the same being hereby expressly waived, to all and singular, the premises and further to stand to, perform,

and abide such further order, direction and decree therein as to this Honorable Court shall seem meet.

And your orators will ever pray, etc.

By STEERE, WILLIAMS & STEERE,
Their Att'ys.

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Carrie Rebecca Furey and Caroline La Tour Furey, each being severally sworn, each upon oath deposes and says that she has heard read the above and foregoing bill of complaint by them, respectively subscribed and that said bill is true in every respect to the best
457 of their respective knowledge, information and belief.

____ ____.
____ ____.

Subscribed and sworn to before me, a Notary Public, by said Carrie Rebecca Furey and Caroline La Tour Furey, this — day of February, A. D. 1909.

____ ____,
Notary Public.

458 EXHIBIT "A."

I, Charles La Tour Furey, of the City of Chicago, County of Cook and State of Illinois, being over twenty-one years of age, and being of sound mind and memory, do by these presents make and declare the same to be my last will and testament, hereby revoking all former wills made by me.

First. I direct that all my just debts be paid.

Second. I devise to my loving wife, Carrie Rebecca Furey and to my loving daughter Caroline La Tour Furey, share and share alike, all the estate, right, title and interest in possession, reversion and remainder which I may have now and also at the time of my death of, in and to any lands, tenements hereditaments, annuities or rents, charged upon or issuing out of them; and I also bequeath all goods and chattels and personal estate of every description whatsoever by will or testament or otherwise, to have and to hold by them share and share alike absolutely in their own right, this to apply to each of the species of property contained in this paragraph.

Third. If at my death my said daughter Caroline La Tour Furey is still a minor, not having reached the legal age of eighteen years, it is my wish and I request that my said wife Carrie Rebecca Furey and my friend James L. Bigelow be appointed jointly guardians of my said daughter Caroline La Tour Furey.

Fourth. I nominate my said wife Carrie Rebecca Furey and my said friend James L. Bigelow to be jointly the executrix and the executor, with proper bond, of this my last will and testament.

Fifth. In event of the death of either the said Carrie Rebecca

Furey or the said James L. Bigelow, it is my wish and I request that

Joseph W. Latimer, 3551 Ellis Avenue, Chicago, Illinois.

John B. Knight, 5634 Calumet Ave., Chicago, Ill.,

Elizabeth C. Hawley, 16 Astor Street, Chicago, Ill.,

the survivor be appointed sole guardian of the said Caroline La Tour Furey, and sole executrix or executor, as the case may be, of
459 this my last will and testament.

Witness my hand and seal this twenty-seventh day of February, A. D. 1902.

CHARLES LA TOUR FUREY. [SEAL.]

We, Joseph W. Latimer, John B. Knight and Elizabeth C. Hawley do hereby certify that we were each present when the above instrument was signed and witnessed the signature of the said Charles La Tour Furey, who declared the foregoing instrument to be his own free and voluntary act and deed, and to be his last will and testament that he signed the same in our presence, and at his request we signed the same as witnesses in his presence and in the presence of each other.

Dated this twenty-seventh day of February, A. D. 1902.

JOSEPH W. LATIMER,
3551 *Ellis Avenue, Chicago, Illinois.*
JOHN B. KNIGHT,
5634 *Calumet Ave., Chicago, Ill.*
ELIZABETH C. HAWLEY,
16 *Astor Street, Chicago, Ill.*

460 Will proved and admitted to record in open court this 8th day of Dec., A. D. 1908.

CHARLES S. CUTTING,
Probate Judge.

STATE OF ILLINOIS,
County of Cook, ss:

In the Probate Court of Cook County.

Proved and admitted to record in open court this 8th day of Dec. A. D. 1908.

GUY GUERNSEY, *Clerk.*

Filed Dec. 8, 1908. Guy Guernsey, Clerk.

461 STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to all to whom these presents shall come, Greeting:

Know Ye, That whereas, Charles La Tour Furey late of the County of Cook and State of Illinois, died on or about the 29th day of Nov., A. D. 1908, as it is said, after having duly made and published his

last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that Carrie R. Furey, has been appointed executrix in and by the said last will and testament, to execute the same, and to the end that said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize her the said Carrie R. Furey as such executrix to collect and secure all and singular the goods and chattels rights and credits which were of the said Charles La Tour Furey at the time of his deceased, in whosoever hands or possession the same may be found, in this State, and well and truly to perform and fulfill all such duties as may be enjoined upon her by the said will, so far as there shall be property, and the law charge-her and in general to do and perform all other acts which now or hereafter may be required of her by law.

Witness, Guy Guernsey, Clerk of the Probate Court of said County of Cook, and the seal of said Court, this 8th day of Dec. A. D. 1908.

[L. S.] GUY GUERNSEY, *Clerk.*

462 STATE OF ILLINOIS,
County of Cook, ss:

I, Guy Guernsey, Clerk of the Probate Court of Cook County, in the state aforesaid, do hereby certify that the within is a true and correct copy of the last will and testament of Charles La Tour Furey deceased, and of Letters Testamentary issued thereon, on the 8th day of Dec. A. D. 1908, to Carrie F. Furey, now in force, as it appears from the originals on file, and from the records of the Probate Court in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Probate Court, at Chicago, In said County, this 8th day of Dec. A. D. 1908.

[Seal of the Probate Court of Cook County, Illinois.
Dec. 2, 1877.]

GUY GUERNSEY, *Clerk.*

463 EXHIBIT "B."

STATE OF WEST VIRGINIA:

Certificate of Incorporation.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, do hereby certify that an Agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The American Investment Guaranty Company for the purpose of

receiving and investing money and making investment contracts to be sold on installments payments; and procuring for such of the investors in such investment contracts as may so desire policies of life insurance and of acting as agent and trustee for life insurance companies and for such investors.

Which corporation shall keep its principal office or place of business at Chicago, in the County of Cook and State of Illinois, and is to expire on the first day of July, A. D. 1942. And for the purpose of forming said corporation, we have subscribed the sum of two hundred thousand dollars, to the capital thereof and have paid in on said subscriptions the sum of twenty thousand dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to one million dollars ($1,000,000.00) in all.

The capital so subscribed is divided into shares of one hundred dollars ($100.00) each, which are held by the undersigned respectively as follows, that is to say: by

464	Oliver H. Horton, Chicago, Illinois	250	shares.
	Lewis W. Pitcher, " "	250	"
	Edward A. Bigelow, " "	150	"
	William D. Preston, " "	100	"
	James L. Bigelow, " "	100	"
	John P. Wilson, " "	50	"
	Frank D. Lewis, Indianapolis, Indiana	250	"
	Herman Kuehn, Detroit, Michigan	250	"
	Thomas M. Hoyne, Chicago, Illinois	10	"
	Alfred P. Bigelow, " "	10	"
	Willis F. Johnson, " "	50	"
	J. B. Knight, " "	530	"
		2000	shares.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 14th day of July, 1892.

O. H. HORTON.
LEWIS W. PITCHER.
EDWARD A. BIGELOW.
WILLIAM D. PRESTON.
JAMES L. BIGELOW.
THOS. M. HOYNE.
JOHN P. WILSON.
FRANK D. LEWIS.
HERMAN KUEHN.
J. B. KNIGHT.
WILLIS F. JOHNSON.
ALFRED P. BIGELOW.

465 Wherefore, The corporators named in the said Agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the First day of

July, nineteen hundred and forty-two, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this nineteenth day of July, eighteen hundred and ninety-two.

[State of West Virginia, Montani Semper Liberi.]

WM. A. OHLEY,
Secretary of State.

466 Copy.

STATE OF WEST VIRGINIA:

Certificate.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that on the 19th day of July, 1892, a certificate of incorporation was issued in due form, from my said office to The American Investment Guaranty Company, as appears from the records of my said office; and I further certify that, on the 28th day of January, 1898, the following resolution agreement, certificate and affidavit were produced to me, in my said office, which resolution, agreement; certificate and affidavit are in the words and figures following:

At the annual meeting of the stockholders of The American Investment Guaranty Company held at room 54, Brother Jonathan Building, Number 2 and 4 Sherman Street, Chicago, on the twelfth day of January, 1898, at eleven o'clock A. M. said meeting having been especially called for the purpose of changing the corporate name, and for increasing the purposes for which the company was formed, all the stockholders having had due notice thereof, it was

Resolved, That the company eliminate from its corporate title the word "Investment," and that hereafter, the name of the corporation shall be "American Guaranty Company of Chicago," instead of "The American Investment Guaranty Company."

It was further Resolved, That the Company hereby adopt a new agreement, so that it shall be for the purpose of

(1) To enter into contract with individuals, firms and corporations.

(2) To act as and transact the business of Agent, and as such to

(*b*) acquire, purchase, hold, sell, dispose of, pledge and otherwise deal in stocks, bonds, securities and evidences of indebtedness

467 or personal property, and to obtain and furnish information concerning same.

(*c*) To acquire by purchase, lease, mortgage, or otherwise hold real estate, and to sell, transfer, mortgage, lease, or otherwise dispose of same.

(*d*) To represent individuals in their dealings with firms, corporations, associations or persons, in the transaction of any lawful business.

(3) To act as Receiving and Disbursing Agent for persons or corporations, in any business transaction.

To guarantee the contracts and obligations of Individuals, firms, corporations or associations, in any business transactions, and to do and perform all such lawful acts as may be necessary or expedient in the conduct of its said business.

We, the undersigned, Stockholders of The American Investment Guaranty Company, owning the number of shares of the capital stock of said company, set opposite our names, hereby assent to the change in the corporate name, and to the new agreement for said Company, adopted by the foregoing resolution.

Given under our hands, this 12th day of January, A. D. 1898.

PERCIVAL STEELE,	1005	shares.
JAMES L. BIGELOW,	one	"
DAVID R. LAMONT,	one	"
D. E. TOWN,	one	"
FRANK D. LEWIS,	310	"
A. P. BIGELOW,	10	"
JESSE W. ROBERTS,	one	"

468 We, Percival Steele, President, and David R. Lamont, Secretary of the American Investment Guaranty Company, hereby certify that the persons whose names are signed above own the number of shares of capital stock of said company, set opposite their names, respectively, that they are a majority of the stockholders of said company, and that the shares of capital stock so owned by them are a majority of the shares of capital stock of said company; and we further certify that the resolution set forth herein is a true copy of the resolution passed at the stockholders' meeting of said company, on the 12th day of January, 1898, and that the same appears upon the records of said company.

PERCIVAL STEELE,
President.

[SEAL.] DAVID R. LAMONT,
Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

I, Roscoe Linscott Roberts, a notary public in and for the county of Cook, in the State of Illinois, do hereby certify that A. P. Bigelow, James L. Bigelow, Percival Steele, D. E. Town, Jesse E. Roberts, David R. Lamont and Frank D. Lewis, stockholders of The American Investment Guaranty Company, personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged to me that they, and each of them, signed the within certificate, for the uses and purposes therein set forth, and that the said resolution therein contained was passed at a meeting of the stockholders of The American Investment Guaranty Company, held in the City of Chicago, in the County and State aforesaid, on the twelfth day of January, 1898.

Given under my hand and notarial seal this 21st day of January, 1898.

[SEAL.] ROSCOE LINSCOTT ROBERTS,
Notary Public.

462 Wherefore, I do declare the name of the said corporation from this date henceforth to be American Guaranty Company of Chicago; and I further declare the stockholders of said corporation, their successors and assigns, to be from this date until the expiration of the period named in the said certificate of Incorporation issued from my said office, on the 19th day of July, 1892, to said The American Investment Guaranty Company, a corporation by the name of American Guaranty Company of Chicago, and for the purpose set forth in the foregoing resolution and agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-eighth day of January, 1898.

WM. M. O. DAWSON,
Secretary of State.

470 STATE OF WEST VIRGINIA:

Certificate.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that Charles L. Furey, vice president of the American Guaranty Company of Chicago, a corporation created and organized under the laws of the State of West Virginia, has certified to me under his signature and the corporate seal of said corporation, that, at a general meeting of the stockholders of said corporation, regularly held pursuant to law, at the office thereof, in the city of Chicago, State of Illinois, on the 13th day of April, 1901, at which meeting a quorum of the stock and of the stockholders was present, the following resolution was duly and regularly adopted and passed, to-wit:

"Resolved, That the authorized capital of the American Guaranty Company of Chicago be reduced from ten thousand shares of the par value of 100 dollars each to five thousand shares of the par value of 100 dollars each, so that the authorized capital stock of said corporation shall be $500,000 all subscribed and paid for."

Wherefore, I do declare said decrease of the authorized capital stock as set forth in the foregoing resolution authorized by law. Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-seventh day of April, 1901.

[G. S.] WM. M. O. DAWSON,
Secretary of State.

471 (*Certificate Under Section 906, Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE.

I, C. W. Swisher, Secretary of State of the State of West Virginia, being the officer, who, under the constitution and laws of said State, is authorized to issue certificates of incorporation, of all companies incorporated under the laws thereof, and being the officer authorized to issue certificates certifying changes in and amendments to such certificates of incorporation, and being the officer who is the keeper of all the records and papers relating to the creation of such incorporated companies and of changes in and amendments to said certificates of incorporation, including the powers of attorney of such incorporated companies, appointing a resident agent or attorney in said State, and of the reports of such incorporated companies, and being the officer authorized to authenticate exemplifications of the same, do hereby certify that the foregoing and annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as said Secretary of State, and found to be a true and correct copy of the certificate of new agreement and change of name of the American Investment Guaranty Company to American Guaranty Company of Chicago, dated the 28th day of January 1898, and of the certificate of decrease, dated the 27th day of April, 1901, and recorded in the records of Corporations of my said office and that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In Testimony Whereof, I have hereunto attached my official signature and the Great Seal of the State of West Virginia, at the capitol in the City of Charleston, this 5th day of August, 1907.

[Great Seal.] C. W. SWISHER,
Secretary of State.

472 In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and in Her Own Right, and Caroline La Tour Furey, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Now comes said American Guaranty Company of Chicago, and confesses each and all of the allegations contained in the bill of complaint filed herein to be true, and that said complainants are entitled to the relief therein prayed, and consents to the appointment forthwith by this Honorable Court of a receiver of all the property,

assets and effects of every description of said American Guaranty Company of Chicago, and to the entry of such further orders and decrees from time to time in the premises as the court may deem proper.

AMERICAN GUARANTY COMPANY
OF CHICAGO,
By FREDERICK M. STEELE,
[Corporate Seal.] *President.*
AMERICAN GUARANTY COMPANY
OF CHICAGO,
By GORHAM & WALES,
Its Solicitors.

Attest:
L. W. PITCHER, *Sec'y.*

473 In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and in Her Own Right, and Caroline La Tour Furey, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Now come Lewis W. Pitcher and James L. Bigelow, the owners respectively of two hundred and sixty (260) shares and one hundred (100) shares of the capital stock of said American Guaranty Company of Chicago, as alleged in the bill of complaint herein, and consent to said Honorable Court granting the relief prayed for in said bill, and to the appointment forthwith of a receiver of all the property, assets and effects of every description of said American Guaranty Company of Chicago.

LEWIS W. PITCHER,
JAMES L. BIGELOW.

474 EXHIBIT B.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

TUESDAY, *February* 2, 1909.

Present: Hon. Christian C. Kohlsaat, Circuit Judge.

29336.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and in Her Own Right and Caroline La Tour Furey,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Upon reading and filing the verified bill of complaint in this cause, together with the exhibits in support thereof, and the answer

of said American Guaranty Company of Chicago, confessing the allegations contained in the bill of complaint filed herein to be true, and that said complainants are entitled to the relief therein prayed, and on motion of the counsel for complainants, and counsel for defendant appearing and consenting thereto, it is

Ordered by the court that Edwin A. Potter of Chicago, in the County of Cook, in the State of Illinois, be and he is hereby appointed Receiver of this court, of all and singular the property of said American Guaranty Company of Chicago of every description, and of all moneys, claims in action, credits, bonds, stocks and other assets of every kind, and of all other property, real, personal
475 and mixed, held or possessed by said company, or to which said Company is entitled, or in which it has any interest to have and to hold the same as an officer of and under the orders and directions of this Court.

The said Receiver is hereby authorized and directed to take immediate possession of all and singular the property, assets and effects above described, and each and every of the officers, directors, agents and employés of said American Guaranty Company of Chicago, and all other individuals, firms and corporations are hereby required and commanded to forthwith on demand of said receiver turn over and deliver to such receiver any and all property, assets and effects of every kind and description, books, papers and vouchers under their or any of their control and belonging to or to which said American Guaranty Company of Chicago is entitled, or in which it has any interest, and the said American Guaranty Company of Chicago, and its officers are hereby directed immediately to execute and deliver to the said receiver a deed or deeds of all real estate now owned or possessed by said company, and transfers and assignments of all the property assets and effects of said Company.

Said receiver is hereby fully authorized to institute and prosecute all such suits as he may deem necessary or proper and to defend all such actions against him as such receiver, and also to appear in and conduct the prosecution or defense of any suit or suits against said Company.

Said receiver is hereby authorized and directed to employ such counsel, attorneys, solicitors, agents, clerks and assistants as he may deem necessary or proper in the discharge of his duties as such Receiver.

476 Said receiver is hereby authorized and directed to deposit all moneys coming into his hands as such receiver in The American Trust & Savings Bank, of Chicago, Illinois, and such other bank or banks as the court may from time to time direct.

All creditors and contract-holders of said American Guaranty Company of Chicago are hereby enjoined from in any way intermeddling, by suit or otherwise, with all or any of the property, assets and effects hereby directed to be turned over to said receiver, and all officers, directors, agents and employés of said American Guaranty Company of Chicago, are hereby enjoined from interfering with or disposing of all or any of said property, assets, and effects of said American Guaranty Company of Chicago, in any way, except to transfer, convey and turn over the same to said Receiver.

Said Receiver is hereby required to file with the clerk of the court a proper bond in the penal sum of fifty thousand (50,000) *Thousand* dollars, with The Empire State Surety Company of New York, as surety, and said receiver now here appears in open court and accepts his said appointment as receiver herein, and now here presents said bond in the penal sum of fifty (50) thousand dollars with said surety, which said Bond the court now here finds to be proper in form and to have been properly executed, and now here approves the same.

477 EXHIBIT C.

This indenture, Made at Chicago, Illinois, Witnesseth: That, the grantor, American Guaranty Company of Chicago, a corporation duly organized under and by virtue of the laws of the State of West Virginia, having an office located at Chicago, in the State of Illinois, under and by virtue of and pursuant to a certain order of the Circuit Court of the United States, for the Northern District of Illinois, Eastern Division thereof, entered on the Second (2nd) day of February, A. D. 1909, in the case of Carrie Rebecca Furey, Executrix of the last will and testament of Charles La Tour Furey, deceased, and also in her own right, and Caroline La Tour Furey versus said American Guaranty Company of Chicago, being General Number 29336 of said Court, and in consideration of the sum of one dollar ($1.00) in hand paid, the receipt of which is hereby acknowledged, hereby conveys and quit-claims, transfers and assigns to Edwin A. Potter, as receiver of said American Guaranty Company of Chicago (appointed such Receiver in and by said Court on the Second (2nd) day of February, A. D. 1909, in the above entitled cause) and to his successor and successors in office, all of the right, title, claim, interest and demand whatsoever of said American Guaranty Company of Chicago, in and to the following to-wit:

All and singular the property of said American Guaranty Company of Chicago, of every description, and all moneys, claims in action, credits, bonds, stocks and other assets of every kind, and all other property, real, personal and mixed, held or possessed by said American Guaranty Company of Chicago, or to which said company is entitled, or in which it has any interest; and all books papers and vouchers of said Company.

478 To have and to hold all of the foregoing property to the said Grantee, as Receiver, and his successor or successors in office, grantee and assigns.

In witness whereof, the grantor, said American Guaranty Company of Chicago, has caused these presents to be duly executed by its President, sealed with its corporate seal and attested by its Secretary, this second (2nd) day of February, A. D. 1909.

AMERICAN GUARANTY COMPANY OF CHICAGO.

By FREDERICK M. STEELE, *President.*

Attest:

L. W. PITCHER.

[CORPORATE SEAL.]

STATE OF ILLINOIS.
County of Cook. ss:

I, Kathryn MacDonald, a Notary Public, in and for said County, in the state aforesaid, do hereby certify that Frederick M. Steele personally known to be the president of the American Guaranty Company of Chicago, and Lewis W. Pitcher, personally known to me to be the Secretary of said Company, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such president and secretary, they signed and delivered the said instrument in writing and caused the corporate seal of said company to be affixed thereto, as their free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this third (3rd) day of February, A. D. 1909.

KATHRYN MACDONALD,
Notary Public.

[SEAL.]

479 EXHIBIT D.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

THURSDAY, *February 4th,* 1909.

Present: Hon. *Honorable* Christian C. Kohlsaat, Circuit Judge.

In Equity. G. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

On motion of counsel for Edward A. Potter, receiver herein, all parties to said cause having had due notice thereof and being now in open court, it is hereby ordered that this cause be, and the same is hereby referred to James S. Hopkins, Esq., one of the Masters in Chancery of this Court, to hear and take, from time to time, the testimony of such person or persons as the receiver herein may indicate to said Master, for the purpose of enabling said receiver to investigate into and ascertain the amount, character, kind and locality of all and singular the property, assets and effects of said American Guaranty Company of Chicago, of every description and of all moneys, claims in actions, credits, bonds, stocks and other assets of every kind, and of all other property, real, personal and

mixed, held or possessed by said Company, or to which said company is entitled or in which it has any interest; also for the purpose of enabling the receiver to ascertain the names and addresses
480 of all creditors and contract-holders of said company, and the amount or amounts due or owing to all of them, respectively; and also for the purpose of enabling the receiver to ascertain the names and residences of all of the stockholders of said Company and the amount of the stock held or owned by them, respectively; and

It is hereby Further Ordered that said Master be, and he is hereby authorized and directed to exercise, from time to time, at the request of said Receiver any and all power and authority necessary or proper to enable said Master to carry this order into effect, and that for the purposes aforesaid said Master is hereby authorized, empowered and directed to compel the attendance, from time to time, by the usual and appropriate proceedings, of such witnesses whose names may be submitted to him by said receiver.

481 EXHIBIT E.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

MONDAY, *February 8th*, 1909.

Present: Honorable Christian C. Kohlsaat, Circuit Judge.

In Equity. G. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Upon motion of counsel for A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting a committee of contract-holders of said American Guaranty Company of Chicago, counsel for the receiver and counsel for all other parties in interest being now in court and having had due notice hereof, leave is hereby given to said A. E. Cross, et al. constituting said committee of contract-holders to file, and they now file herein their petition of intervention, and leave is hereby given to said A. E. Cross, et al., to become and they are hereby made parties as intervenors herein.

Chicago, February 8, 1909.

482 EXHIBIT F.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

SATURDAY, *February 27th*, 1909.

Present: Honorable Christian C. Kohlsaat, Circuit Judge.

29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO.

There now comes on to be heard the petition of Edwin A. Potter, receiver herein, filed herein on February 13, 1909, against the Royal Trust Company of Chicago, praying for an order directing said Royal Trust Company to turn over to said Receiver all of the property, assets and funds held by said Royal Trust Company under an agreement dated April 10, 1899, as amended, made between it and said American Guaranty Company of Chicago, and also the demurrer of said Royal Trust Company filed to said petition; and there comes on also to be heard at the same time the intervening petition filed herein on February 19, 1909, of A. E. Cross, et al. constituting the Contract-holders' Committee and which intervening petition prays that the relief sought for in said petition of said Receiver should be granted; and the court having heard the arguments of Levy Mayer, Esq., counsel for said Receiver, and E. A. Bancroft, Esq., counsel for said Royal Trust Company and
483 of Messrs. Gorham & Wales, counsel for said Contract-holders' Committee, and being fully advised in the premises;

It is hereby ordered, and adjudged that said demurrer of said Royal Trust Company shall be and the same is hereby overruled, and said Royal Trust Company asks and is hereby given leave to answer said petition of said Receiver at or before 10 A. M. of Tuesday, March 2nd, 1909.

484 EXHIBIT G.

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

SATURDAY, *March* 6, 1909.

Present: Hon. Christian C. Kohlsaat, Circuit Judge.

In Equity. G. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO.

There now comes on to be heard the petition of Edwin A. Potter, Receiver herein, filed herein on February 13, 1909, against the Royal Trust Company of Chicago praying for an order directing said Royal Trust Company to turn over to said Receiver all of the property, assets and funds held by said Royal Trust Company under an agreement dated April 10, 1899 as amended, made between said Royal Trust Company and said American Guaranty Company of Chicago, and also the answer of said Royal Trust Company this day filed herein to said petition, also the replication of said Receiver this day filed herein to said answer, and there also comes on to be heard at the same time the petition of A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting the Contract-holders' Committee, this day by leave of court filed herein, to which, upon motion of solicitor for said receiver, the said petition of said Receiver is hereby ordered to stand as an answer, and to which said petition of said Contract-holders' Committee the said answer
485 of said Royal Trust Company, this day filed herein, is, upon motion of solicitor for said Royal Trust Company, hereby ordered to stand as an answer, and there also comes on to be heard the intervening petition of said Royal Trust Company filed herein on February 19, 1909, praying the aid and direction of this court in and about said agreement, as amended, and the reduction of said assets to cash, and the distribution thereof; and the court having heard the arguments of Levy Mayer, Esq., counsel for said Receiver, and of E. A. Bancroft, Esq., counsel for said Royal Trust Company and of Sidney Gorham, Esq., counsel for said Contract-holders' Committee, and being fully advised in the premises;

It is hereby ordered and adjudged that said Royal Trust Company shall within ten days turn over to said Receiver all of the property, assets and funds held by said Royal Trust Company under the agreement, as amended, and when said Receiver has acquired possession of said property, assets and funds, he is hereby authorized and directed to hold and, in due course from time to time, collect and

convert said property, assets and funds into cash; and he is hereby Further Ordered and directed to hold said property, assets and funds, and the proceeds thereof, as a separate and distinct fund and subject to such claims and trusts as this court may hereafter find were impressed upon said property, assets and funds, and the proceeds thereof, by said agreement, as amended, and by any contracts issued by said American Guaranty Company; and

It is hereby Further Ordered and Adjudged that any and all rights, claims and demands, whatever the same may be, of any and all contract-holders of said American Guaranty Company upon, in, to or against said property, assets and funds, and the proceeds thereof, while the same were held by said Royal Trust Company, shall continue against said property, assets and funds, and the proceeds thereof, while and during the time that they are held by or are in the possession of said Receiver.

486 It is hereby further ordered and directed that Haskins & Sells, accountants, who have heretofore examined the books of said American Guaranty Company containing the records of said Contracts and computed the reserves required according to the table of reserves adopted by said American Guaranty Company, may make a similar examination covering the period since February 29, 1908, up to and including February 1, 1909, and at like expense, as is specified in said agreement, as amended; and said accountants shall furnish a certificate of such examination in triplicate, one copy to be delivered to said Receiver, another to said Royal Trust Company and another to said Contract-holders' Committee.

It is hereby further ordered and directed that said Contract-holders' Committee shall, in due course and prior to any distribution of said property, assets and funds, and the proceeds thereof, file herein the numbers of the contracts represented by said Committee, the amount of the claims made thereunder, and the names and addresses of the holders of such contracts, who asserted or claimed, or now assert or claim any preferential right or demand whatsoever in, to or against said property, assets and funds, and the proceeds thereof, by virtue of the provisions of their contracts and of said agreement of April 10, 1899 as amended.

It is hereby further ordered and directed that upon the delivery by said Royal Trust Company of said property, assets and funds to the receiver herein, all the duties and obligations of said Royal Trust Company arising or growing out of said agreement, as amended, or out of any of said contracts as to said property, assets and funds and the proceeds thereof, shall thereupon pass to

487 said receiver, and said Royal Trust Company shall thereupon be forthwith relieved of all further duties or obligations as to said property, assets and funds, and the proceeds thereof, or as to any of the beneficiaries thereof.

It is hereby further ordered and directed that said Royal Trust Company may retain out of said property, assets and funds so in its hands, the sum of two thousand dollars ($2000.) in full payment and satisfaction of all charges, compensation, costs, expenses,

solicitors' and counsel fees incurred by said Royal Trust Company in the premises.

Chicago, March 6th, 1909.

488 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Equity. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and Also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Inventory of Assets and Schedule of Liabilities of said American Guaranty Company.

Edwin A. Potter, Receiver.
Mayer, Meyer & Austrian, Counsel for Receiver.
Chicago, March 26, 1909.

Circuit Court of the United States, Northern District of Illinois, Eastern Division.

Filed by leave of Court Mar. 26, 1909.
H. S. STODDARD, *Clerk.*

489 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Equity. No. 29336.

CARRIE REBECCA FUREY, Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and Also in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Inventory of Assets and Schedule of Liabilities.

To the Honorable Judges of said Court:

Now comes Edwin A. Potter, receiver of the estate of said American Guaranty Company of Chicago, and respectfully reports that since his appointment herein on February 2, 1909, he has been diligently and continuously engaged with a force of accountants in preparing an inventory of assets and a schedule of liabilities of said American Guaranty Company, and he now respectfully submits herewith to this honorable court an inventory of all of the property and assets of said American Guaranty Company, so far as they have come to the knowledge, information or possession of said receiver, and a complete schedule of all liabilities of said American Guaranty Company, so far as the books of said American Guaranty Company disclose the same. A condensed statement of said assets and liabilities is as follows:

Condensed Statement of Assets (Taken at Face Value) and Liabilities as of February 3, 1909, as per Books.

Assets:		Special fund.	General fund.	Total.
Cash and in banks		$269,801.37	$118,215.19	$388,016.56
Real estate loans		46,750.00	73,642.00	120,392.00
Bonds		249,340.00	.....	249,340.00
Accounts receivable		.....	56,717.36	56,717.36
Bills receivable:				
General	$155,348.48			
Pearce & Sisson notes	2,327.94			
		.....	157,676.42	157,676.42
Bank stocks		.....	2,000.00	2,000.00
Instalment loans		.....	3,508.43	3,508.43
		$565,891.37	$411,759.40	$977,650.77
Loans on Contracts		.....	431,583.30	431,583.30
		$565,891.37	$843,342.70	$1,409,234.07

Liabilities:	Based upon surrender value of contracts.	Based upon net amount cash paid in.
Due Contract holders under terms of Contracts	$1,513,345.92	$2,502,988.29
Deduct if set-offs be allowed	431,583.30	431,583.30
	$1,081,762.62	$2,071,404.99
Sundry credits and unpaid bills	3,993.33	3,993.33
	$1,085,755.95	$2,075,398.32

491 Said receiver further reports that he has inventoried said property and assets at their face or book value. The loans made on contracts by said American Guaranty Company amounting to $431,583.30, are a good asset in the opinion of the receiver for the face value thereof, if this court shall adjudicate that the estate is entitled to a set-off against the owners of the contracts, for the full amount of said loans, to secure which loans said estate holds said contracts. Among the real estate loans ($120,392.00), the accounts receivable ($56,717.36), and the bills receivable ($157,676.42), are a number of items that are worthless, or doubtful, and so far as the receiver's investigation has proceeded, it is his opinion that the three classes of assets just referred to, which have a total book or face value of $334,785.78, will probably not realize more than $150,000, being an estimated loss of $184,785.78.

The liabilities of said estate arise almost entirely on the 6,892 outstanding contracts of said American Guaranty Company.

The final amount of said liabilities will depend not only upon whether said estate is entitled to the set-off above referred to, but also upon the amount for which this court shall hold that the claims upon said contracts are provable. Under the terms of said contracts, those which have not run for two years have no surrender value. There has, however, been paid to said Company by the owners of said less than two year old contracts $253,225.22. The total surrender value of all outstanding contracts that have a surrender value is $1,513,345.92, and if this court shall allow a set-off of said $431,583.30 (the amount of the loans made by said Company to said contract holders on the security of said contracts), and if said $253,225.22 (paid on less than two year old contracts) be excluded, as liabilities, then the net liabilities of the estate are $1,085,755.95. To meet said liabilities said estate has assets of a total book or face value of $977,650.79, which amount is subject, however, to the estimated reduction of $184,785.78 hereinbefore referred to, leaving a net balance of assets of $792,864.99. If, however, the liabilities of said estate are to be measured upon a basis of total moneys paid into said Company, regardless of the sur-
492 render value of said contracts, and regardless of the fact that certain of said contracts have no surrender value whatever, and if said set-off be allowed, then the total liabilities of said estate will amount to $2,075,398.32. If, on the other hand, the liabilities of said estate are to be measured upon still another and different basis, viz.: that of the actuarial value of all said outstanding contracts, then and in that event the receiver is unable to now make an estimate of said liabilities, because the ascertainment of the actuarial value of said contracts will require several months' work, at a very considerable expense, by expert actuaries.

The receiver further reports that in addition to the foregoing questions that await solution by this court, the amount of the dividend that the contract holders will realize herein, will depend upon the extent to which the contract holders, who are interested in the special fund (the face value of which is $565,891.37, and which

was turned over to the receiver under the decree of this court, entered herein on March 6, 1909, against the Royal Trust Company), have a right to participate in the general fund, and also upon the extent to which the contract holders who are interested in the general fund have a right to participate in said special fund. There are 2,579 contracts upon which there was paid to said American Guaranty Company (after deducting the amount paid out) $423,983.68, which contracts have a net surrender value, after deductions, of $143,711.60, and which contracts according to their terms do not participate in said special fund.

Said inventory classifies and gives full details of the assets, and said schedule of liabilities shows the various classes of outstanding contracts, the total number of each, their total surrender value, the total amount paid out by the Company for contract holders and which amount the Company is entitled to have repaid, the total amount paid out by the Company to contract holders on loans and evidenced by the notes of the contract holders, and secured by their contracts, the total respective net surrender value of all of the respective classes of contracts which have a surrender value,
493 and the total net amount paid by contract holders on contracts not yet two years old, which have no surrender value.

All of which is respectfully submitted.

EDWIN A. POTTER,
Receiver of American Guaranty Company of Chicago.

MAYER, MEYER & AUSTRIAN,
Counsel for Receiver.

Chicago, March 26, 1909.

STATE OF ILLINOIS,
County of Cook, ss:

Edwin A. Potter, being first duly sworn, upon oath deposes and says that he has read the above and foregoing report, by him subscribed, and that the same and the annexed inventory of the assets and schedule of liabilities of the estate of said American Guaranty Company of Chicago are true to the best of his knowledge, information and belief.

EDWIN A. POTTER.

Subscribed and sworn to by said Edwin A. Potter, before me, a Notary Public, this twenty-sixth (26th) day of March, A. D. 1909.

[SEAL.] GEO. W. SPEICH,
Notary Public, Cook County, Illinois.

Endorsed: Filed Mch. 26, 1909. H. S. Stoddard, Clerk.

494 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, H. S. Stoddard, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above

and foregoing to be a true and complete copy of the inventory of assets and schedule of liabilities of said American Guaranty Company, filed in said court on the 26th day of March, A. D. 1909, in the cause wherein Carrie Rebecca Furey, executrix, etc., et al., are the complainants, and American Guaranty Company, of Chicago, is the defendant, as the same appears from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 26th day of March, A. D. 1909.

[SEAL.]

H. S. STODDARD, *Clerk*.
By JOHN H. R. JAMAR,
Chief Deputy.

494½ EXHIBIT H.

495 EXHIBIT I.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss.:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

Present: Honorable Christian C. Kohlsaat, Circuit Judge.

WEDNESDAY, *May 26th*, 1909.

No. 29336.

CARRIE REBECCA FUREY et al., Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

On motion of counsel for Edwin A. Potter, Receiver herein, all parties to said cause having due notice hereof and being now in open court, and it now appearing to this court that the defendant American Guaranty Company of Chicago, has been heretofore duly dissolved and that Edwin A. Potter, the receiver herein, now has in his possession the property, assets and funds of said Guaranty Company, and that said property, assets and funds are subject to the claims of the contract-holders and other creditors and claimants of said Guaranty Company, in accordance with their respective rights and equities as may be hereafter determined, and that the surplus, if any, after paying the claims of such contract-holders, and other creditors and claimants, is subject to the claims of the stockholders of said Guaranty Company; and it appearing to the court that it will be necessary to distribute the property, assets and funds of said Guaranty Company among its respective contract-holders, creditors, claimants and stockholders, in accordance with their respective rights and equities.

496 It is hereby Ordered that all contract-holders, and all other persons having claims against said American Guaranty Company of Chicago, be and they hereby are directed to present and file such claims on or before the first day of September, 1909, with James S. Hopkins, Esq., one of the Masters in Chancery of this court (to whom this cause has heretofore been referred), in such manner and form as said Master, subject to the orders of this court, shall direct; and

It is hereby Further Ordered that any contract-holder, or creditor or claimant of said Guaranty Company failing to file his claim against said Guaranty Company with said Master on or before the first day of September, 1909, shall be forever barred and excluded, except for good cause shown to this court, from participating in any way in the property, assets and funds of said Guaranty Company under the control or administration of this court. Said Master is hereby directed to give public notice of the place of filing such claims and the time within which the same must be filed, by publishing such notice in a daily newspaper of general circulation, published in the City of Chicago at least once in each week for four successive weeks, the first publication thereof to be prior to the first day of June, 1909. Such notice shall advise the claimants that unless proofs of claim be filed with said Master on or before the first day of September, 1909, they will be excluded from participating in any way in the property, assets and funds of said Guaranty Company under the control or administration of this court.

497 Said Master is further directed to mail a copy of such notice to each and every contract-holder and creditor and claimant of said Guaranty Company, appearing as such on the books of said Guaranty Company. All proofs of claim filed with said Master by any person holding a contract of said Guaranty Company, shall show the total amount paid to said Guaranty Company by said contract-holder, taking into consideration all transactions with said Guaranty Company, and the amounts of all loans and advances made by said Guaranty Company upon such contract or otherwise and the total dividends or other payments received thereon. Such proofs of claim shall state what, if any, prior or preferential right or demand said claimants assert in, to or against said property, assets and funds, and the proceeds thereof, or any part thereof, and what right, if any, said claimants assert to participate or share in any separate and distinct fund under the control or administration of this court. Such proofs of claim shall have attached thereto the contract upon which the claim is based (unless the contract has been heretofore delivered to said Guaranty Company, in which event the proof of claim shall so state). The proof of claim shall be upon a form to be prescribed by said Master, and shall contain such further information as said Master may require, said Master being hereby empowered to make such further rules and regulations in respect thereto, as to him shall seem right and proper. After the proofs of claim have been presented to said Master, as aforesaid, he shall pass upon the same and cause the same to be properly audited and ascer-

tain what part of said claims are correct and valid and deter-
498 mine what amounts shall be allowed thereon, and what priorities, preferences and equities, if any, of participation in any separate fund shall be accorded said claimants, all in accordance with such rules with respect thereto as may hereafter be declared by the Master, or by the court, if application therefor shall be made to the court. As soon as convenient after the first day of September, 1909, said Master shall report to this court all claims allowed by him, and all claims disallowed by him, and his findings with reference to such priorities, preferences and equities, if any, and all his action hereunder with respect to each and every claim presented to and passed upon by him, together with such other matters as may be necessary to enable this court to obtain a correct understanding of his action in regard thereto. If in the judgment of the Master it will expedite the hearing of this cause by making an earlier report or securing an earlier ruling of this court upon any claim or claims, or upon any matter or matters in connection with any claim or claims, said Master may, upon due notice to the parties in interest, present the same to this Court for sooner determination. Said Master is authorized to appoint an accountant at a reasonable expense, and employ such clerical force and provide the necessary books, forms and stationery as to him may seem necessary for the proper consideration, audit, determination and disposition of all said claims and of all matters pertaining thereto.

Chicago, May —, 1909.

499 EXHIBIT J.

Copy of Notice to Contract-holders Published in Chicago Daily Tribune.

EXHIBIT K.

Notice to Contract-holders and All Other Persons Having Claims Against the American Guaranty Company of Chicago to File Proof of Claims with James S. Hopkins, Master in Chancery.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

No. 29336.

CARRIE REBECCA FUREY et al., Complainants,
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant.

Notice is hereby given, under and in accordance with an order entered May 26, 1909, by the Honorable C. C. Kohlsaat, one of the judges of said United States Circuit Court, in the above entitled

cause, that all contract-holders, and all other persons having claims against said American Guaranty Company of Chicago, shall, on or before the first day of September, 1909, file with the undersigned, James S. Hopkins, a Master in Chancery of said Court, at room 925 No. 125 Monroe St. (American Trust Building), Chicago, Illinois, a proof of claim upon a form prescribed by said Master in Chancery.

All proofs of claim filed with said Master by any person holding a contract of said Guaranty Company shall show the total amount paid to said Guaranty Company by said contract-holder, taking into consideration all transactions with said Guaranty Company,
500 and the amounts of all loans and advances made by said Guaranty Company, upon such contract or otherwise, and the total dividends, or other payments received thereon. Such proofs of claim shall state what, if any, prior or preferential right or demand said claimants assert in, to or against the property, assets and funds, and the proceeds thereof, or any part thereof, of said American Guaranty Company of Chicago, and what right, if any, said claimants assert to participate or share in any separate and distinct fund under the control or administration of said court. Such proofs of claim shall have attached thereto the contract upon which the claim is based (unless the contract has heretofore been delivered to said Guaranty Company, in which event the proof of claim shall so state.)

Any contract-holder or creditor or claimant of said Guaranty Company who shall fail to file his claim against said Guaranty Company with said Master, on or before the first day of September, 1909, will be excluded from participating in any way in the property, assets and funds of said Guaranty Company under the control or administration of said Court.

JAMES S. HOPKINS,
Master in Chancery.

Chicago, May 29, 1909.

MAYER, MEYER & AUSTRIAN,
Counsel for Receiver of American Guaranty Company of Chicago.

501 EXHIBIT L.

(Form of proof of claim prescribed by the Master in Chancery, under and in accordance with an order of the United States Circuit Court for the Northern District of Illinois, Eastern Division, entered May 26, 1909, in Furey et al. v. American Guaranty Company of Chicago, Case No. 29336. A separate proof of claim should be filled out for each contract.)

Proof of Claim Against American Guaranty Company of Chicago.

STATE OF ——,
County of ——:

To James S. Hopkins, Master in Chancery of the United States Circuit Court, Northern District of Illinois, Eastern Division, Room 925, American Trust Building, 125 Monroe Street, Chicago, Illinois:

I, —— —— do reside at No. ——, in the city of ——, State of ——, and do herewith present and file this my claim, against the American Guaranty Company of Chicago, under and in accordance with the order entered on May 26, 1909, by the United States Circuit Court, for the Northern District of Illinois, Eastern Division, in Furey et al. vs. American Guaranty Company of Chicago, Case No. 29336, and pray for the allowance thereof.

I am the owner and holder of the following described contract issued by said American Guaranty Company of Chicago.

Kind of contract. (Here state kind of contract, whether income contract, service contract, investment contract, etc.)	Contract number.	Date of issue of contract.	Amount of contract.	Amount of each instalment and when payable (whether monthly, quarterly, etc.)

Said contract No. —— was issued in the name of —— —— of —— State of ——.

502

	Leave this column blank.
There has been paid on said contract to said American Guaranty Company, from the date of issuance of said contract, the total sum of.....	$.....
The last payment on said contract was made on —— — and was	$.....
The cash surrender value of said contract on Feb. 1, 1909, according to the terms thereof was.....	$.....
There has been loaned or advanced on said Contract, or otherwise, to me by said American Guaranty Company, the total amount of.....	$.....

Interest on said loans and advances has been paid by me up to the — day of —— 190–.
There has been received on said contract from said American Guaranty Company, as dividends or other payments, the total sum of..... $.....

do

I do not claim a prior or preferential right or demand against the property, assets and funds of said American Guaranty Company, as follows:

.....

.....

.....

.....

do

I do not claim a right to participate or share in the separate and distinct fund under the control and administration of said Court, as follows:

.....

.....

.....

for the following reasons:

.....

.....

.....

.....

If the claimant is an assignee of the original contract-holder, he will here state the full particulars of the assignment, as it appears from the contract, and if the assignment is by separate instrument, the instrument of assignment should be attached hereto.

503 I herewith attach and make a part of this claim, said contract No. — of said American Guaranty Company of Chicago.

If said Contract has been heretofore delivered to said Guaranty Company, state when and why it was so delivered.

.....

.....

.....

There is now due and owing to me on said contract the sum of $—— over and above all just claims, deductions and set-offs. I respectfully pray that my said claim be allowed for said sum, and that I be allowed and decreed such preferences, priorities and equities, and such participation in the separate and distinct fund held by the Receiver herein, and such proportionate share of all the property, assets and funds of said American Guaranty Company, as under all the facts and circumstances shall be just and equitable in the premises.

.....

.....

.....

.....

—— ——.

Affidavit.

STATE OF ——,
County of ——, *ss:*

—— —— being first duly sworn, upon oath deposes and says that the above and foregoing proof of claim, by him subscribed, is true.

—— ——.

Subscribed and sworn to before me, a Notary Public, this — day of —— 1909.

—— ——,
Notary Public in and for the County of ——, *State of* ——.

Mayer, Meyer & Austrian, Chicago, Illinois, Counsel for Receiver of the American Guaranty Company of Chicago.

504 [Endorsed:] Claim No. —. Proof of claim against American Guaranty Company of Chicago. —— ——, Claimant. Residence, ——. State, ——. Contract No. —. Filed —— —, 1909. —— ——, Master in Chancery.

505 *Contract-Holder's Agreement.*

I, the undersigned holder of contract Number — issued by the American Guaranty Company of Chicago, hereby make, constitute and appoint Albert E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, all of Chicago, Illinois, constituting the Contract-Holders' Committee, my true and lawful agents and attorneys in fact, in my name or in the name of the Committee, or otherwise, to act in my interests and do such acts and things and adopt any and all measures through Court proceedings or otherwise, in such a manner and upon such terms as said Committee may, in its dis-

cretion, deem proper or necessary to preserve, protect and enforce my rights as such contract-holder; and I hereby agree with said Committee and each member thereof that the action of a majority of the Committee shall in all matters and things be binding upon and regarded as the action of the entire Committee and the undersigned; that neither the Committee nor any of its members shall be answerable or liable for any officer, agent or attorney appointed and selected with reasonable care (and the Committee is hereby authorized to make such appointment), nor be responsible to anyone at any time except for his own actual bad faith in the discharge or exercise of any of the powers or authorities hereby and herein vested in the Committee, or any member thereof.

I further agree that I will deposit my contract with the Committee and furnish the Committee with full information as to the amount and number of payments made under the terms of said contract and such other data and documents as the Committee may require to enable it to make proof of my claim in accordance with the orders of the Court, and the Committee agrees in turn to issue its receipt for my said contract when so deposited, to file my said claim in proper form, and by its counsel represent me in
506 the matter of making proof thereof, and to request the Receiver to make all remittances (except the one per cent. (1%) hereinafter mentioned) to me.

I further agree that any member of the Committee may resign and that any vacancy in the Committee, no matter how caused, may be filled by the appointment of a successor by the remaining members who, or a majority of whom, during the vacancy may exercise all the powers and authority hereby given to and vested in the Committee, and I hereby authorize the Committee to incur and pay all costs, attorney's and solicitor's fees, expenses, disbursements and outlays of every name, nature and description which it, in its discretion, may deem necessary or proper in and about the exercise of the powers and authority hereby conferred upon and vested in it provided, that my liability hereunder shall in no event exceed an amount equal to one per centum (1%) of the amount for which my claim may be finally allowed by the court; and I hereby assign to said Committee such a part of the moneys which shall be or become due me on account of my claim against said Guaranty Company as shall equal one per centum (1%) of the amount for which my said claim shall be finally allowed, and hereby authorize and request the Receiver of said Guaranty Company, or any person, firm or corporation, making payments on said claims to pay to said Committee out of the moneys I may be entitled to receive, one per centum (1%) of the amount for which my said claim may be finally allowed by the Court.

507 The powers herein and hereby granted to and vested in the Committee are discretionary and the Committee shall be under no obligation to exercise the same or any or either of them (except as herein otherwise specifically provided), in case the Committee shall deem it for the best interests of the contract-holders not to take such action or to exercise such powers, or any of them.

The Committee, or the undersigned, may terminate this agreement at will by giving notice in writing of such termination, but such termination shall not affect any assents, acts, agreements or proceedings of a legal nature, or otherwise, that the Committee has made, done or instituted prior to such termination, nor affect the right of said Committee to reasonable reimbursement or compensation as aforesaid, taking into consideration the services rendered up to that time, but said compensation shall in no event exceed said one per centum (1%) of the amount for which said claim shall be finally allowed as aforesaid.

The members of the Committee by issuing this agreement and causing their names to be printed below have signified their consent to accept such powers and authority as may be conferred upon them by the terms and provisions of this agreement.

ALBERT E. CROSS,
JOSEPH F. LEAMING,
L. K. TORBET,
A. E. TAYLOR,
Committee.

____ ____

Contract Holder.

____,

P. O. Address.

Chicago, March 31st, 1909.

Contract Numbered —.

Exhibit M. Printed Copy of Contract-Holder's Agreement.

508 EXHIBIT N.

Contract-Holder's Agreement.

I, the undersigned holder of contract Number — issued by the American Guaranty Company of Chicago, hereby make, constitute and appoint Albert E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, all of Chicago, Illinois, constituting the Contract-Holders' Committee, my true and lawful agents and attorneys in fact, in my name or in the name of the Committee, or otherwise, to act in my interests and do such acts and things and adopt any and all measures through Court proceedings or otherwise, in such a manner and upon such terms as said Committee may, in its discretion, deem proper or necessary to preserve, protect and enforce my rights as such contract-holder; and I hereby agree with said Committee and each member thereof that the action of a majority of the Committee shall in all matters and things be binding upon and regarded as the action of the entire Committee and the undersigned; that neither the Committee nor any of its members shall be answerable or liable for any officer, agent or attorney appointed and selected with reasonable care (and the Committee is hereby authorized to make such appointment), nor be responsible to anyone

at any time except for his own actual bad faith in the discharge or exercise of any of the powers or authorities hereby and herein vested in the Committee, or any member thereof.

I further agree that I will deposit my contract with the Committee and furnish the Committee with full information as to the amount and number of payments made under the terms of said contract and such other data and documents as the Committee may require to enable it to make proof of my claim in accordance with the orders of the Court, and the Committee agrees in turn to issue its receipt for my said contract when so deposited, to file my said claim in proper form, and by its counsel represent me in
509 the matter of making proof thereof, and to request the Receiver to make all remittances (except the one per cent. (1%) hereinafter mentioned) to me.

I further agree that any member of the Committee may resign and that any vacancy in the Committee, no matter how caused, may be filled by the appointment of a successor by the remaining members who, or a majority of whom, during the vacancy may exercise all the powers and authority hereby given to and vested in the Committee, and I hereby authorize the Committee to incur and pay all costs, attorney's and solicitor's fees, expenses, disbursements and outlays of every name, nature and description which it, in its discretion, may deem necessary or proper in and about the exercise of the powers and authority hereby conferred upon and vested in it provided, that my liability hereunder shall in no event exceed an amount equal to one per centum (1%) of the amount for which my claim may be finally allowed by the court; and I hereby assign to said Committee such a part of the moneys which shall be or become due me on account of my claim against said Guaranty Company as shall equal one per centum (1%) of the amount for which my said claim shall be finally allowed, and hereby authorize and request the Receiver of said Guaranty Company, or any person, firm or corporation, making payments on said claims to pay to said Committee out of the moneys I may be entitled to receive, one per centum (1%) of the amount for which my said claim may be finally allowed by the Court.

510 The powers herein and hereby granted to and vested in the Committee are discretionary and the Committee shall be under no obligation to exercise the same or any or either of them (except as herein otherwise specifically provided), in case the Committee shall deem it for the best interests of the contract-holders not to take such action or to exercise such powers, or any of them.

The Committee, or the undersigned, may terminate this agreement at will by giving notice in writing of such termination, but such termination shall not affect any assents, acts, agreements or proceedings of a legal nature, or otherwise, that the Committee has made, done or instituted prior to such termination, nor affect the right of said Committee to reasonable reimbursement or compensation as aforesaid, taking into consideration the services rendered up to that time, but said compensation shall in no event exceed said one

per centum (1%) of the amount for which said claim shall be finally allowed as aforesaid.

The members of the Committee by issuing this agreement and causing their names to be printed below have signified their consent to accept such powers and authority as may be conferred upon them by the terms and provisions of this agreement.

ALBERT E. CROSS,
JOSEPH F. LEAMING,
L. K. TORBET,
A. E. TAYLOR,
Committee.

Chicago, March 31st, 1909.

(Sgd.) WARREN R. GILLIAM,
Contract Holder.
506 *Pioneer Press Bldg.*
P. O. Address.

Contracts Numbered *a*. 11749-*a*, 119-*a*. 12351.

Exhibit N. Printed Copy of Contract-Holder's Agreement as signed by W. R. Gilliam.

511 EXHIBIT O.

Contract-Holder's Agreement.

I, the undersigned holder of contract Number —, issued by the American Guaranty Company of Chicago, hereby make, constitute and appoint Albert E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, all of Chicago, Illinois, constituting the Contract-Holders' Committee, my true and lawful agents and attorneys in fact, in my name or in the name of the Committee, or otherwise, to act in my interests and do such acts and things and adopt any and all measures through Court proceedings or otherwise, in such a manner and upon such terms as said Committee may, in its discretion, deem proper or necessary to preserve, protect and enforce my rights as such contract-holder; and I hereby agree with said Committee and each member thereof that the action of a majority of the Committee shall in all matters and things be binding upon and regarded as the action of the entire Committee and the undersigned; that neither the Committee nor any of its members shall be answerable or liable for any officer, agent or attorney appointed and selected with reasonable care, (and the Committee is hereby authorized to make such appointment) nor be responsible to anyone at any time except for his own actual bad faith in the discharge or exercise of any of the powers or authorities hereby and herein vested in the Committee, or any member thereof.

I further agree that I will deposit my contrat with the Committee and furnish the Committee with full information as to the amount and number of payments made under the terms of said contract and such other data and documents the Committee may require to enable it to make proof of my claim in accordance with the orders of the Court, and the Committee agrees in turn to issue its receipt for my said contract when so deposited, to file my
512 said claim in proper form, and by its counsel represent me in the matter of making proof thereof, and to request the Receiver to make all remittances (except the one per cent. (1%) hereinafter mentioned) to me.

I further agree that any member of the Committee may resign and that any vacancy in the Committee, no matter how caused, may be filled by the appointment of a successor by the remaining members who, or a majority of whom, during the vacancy may exercise all the powers and authority hereby given to and vested in the Committee, and I hereby authorize the Committee to incur and pay all costs, attorney's and solicitor's fees, expenses, disbursements and outlays of every name, nature and description which it, in its discretion, may deem necessary or proper in and about the exercise of the powers and authority hereby conferred upon and vested in it, provided, that my liability hereunder shall in no event exceed an amount equal to one per centum (1%) of the amount for which my claim may be finally allowed by the court; and I hereby assign to said Committee such a part of the moneys which shall be or become due me on account of my claim against said Guaranty Company as shall equal one per centum (1%) of the amount for which my said claim shall be finally allowed, and hereby authorize and request the Receiver of said Guaranty Company, or any person, firm or corporation, making payments on said claims to pay to said Committee out of the moneys I may be entitled to receive, one per centum (1%) of the amount for which my said claim may be finally allowed by the Court.
513 The powers herein and hereby granted to and vested in the Committee are discretionary and the Committee shall be under no obligation to exercise the same or any or either of them (except as herein otherwise specifically provided), in case the Committee shall deem it for the best interests of the contract-holders not to take such action or to exercise such powers, or any of them.

The Committee, or the undersigned, may terminate this agreement at will by giving notice in writing of such termination, but such termination shall not affect any assents, acts, agreements or proceedings of a legal nature, or otherwise, that the Committee has made, done or instituted prior to such termination, nor affect the right of said Committee to reasonable reimbursement or compensation as aforesaid, taking into consideration the services rendered up to that time, but said compensation shall in no event exceed said one per centum (1%) of the amount for which said claim shall be finally allowed as aforesaid.

The members of the Committee by issuing this agreement and causing their names to be printed below have signified their consent

to accept such powers and authority as may be conferred upon them by the terms and provisions of this agreement.

ALBERT E. CROSS,
JOSEPH F. LEAMING,
L. K. TORBET,
A. E. TAYLOR,
Committee.

Chicago, March 31st, 1909.

(Sgd.) WARREN R. GILLIAM,
Contract Holder.
506 *Pioneer Press Bldg., St. Paul,*
Formerly at 210 *N. Y. Life Bldg., St. Paul.*
P. O. Address.

Contract Numbered A 6332.

Exhibit O. Printed Copy of Contract-Holder's Agreement as signed by W. R. Gilliam.

514 EXHIBIT B.

Charles H. Cross, President & Manager. Published Monthly.

The United Banker and Investor.

Devoted to Bankers, Brokers, Merchants and General Financial, Real Estate and Business Interests.

Offices: Minneapolis: Suite 2 Corn Exchange Bldg. Telephone: N. W. Nicollet 2246. St. Paul: 506 Pioneer Press Bldg. Telephone: Tri-state 489.

MINNEAPOLIS, MINN., *October 18th*, 1909.

Mr. Thos. E. Covington, City.

DEAR SIR: Good news concerning your claim against the American Guaranty Co., of Chicago, is about to be made public.

The report of the Receiver, recently issued, would indicate that contract-holders were going to fare very poorly at the final distribution.

There has been "something started" by the Company's former General Agent of the Northwest (assisted morally by more than eighty prominent contract-holders of the Twin Cities) which, it is predicted, will increase the value of your claim fully 100 per cent.

The United Banker took up the fight for the contract-holders and is pleased to announce this month that practical results have been obtained.

The next few months will develop some very interesting reading for contract-holders of the American Guaranty Co., and in view of the fact that the press of Chicago and elsewhere does not "see fit"

to print the rapid developments of affairs, we are mailing you under separate cover the October number of The United Banker.

We enclose herewith a subscription blank and if you will fill same out and return to us with check, draft, or money order, you will receive the United Banker for twelve months, thereby keeping yourself fully posted on all matters affecting your claim, which now seems to be doubled in value.

Awaiting your reply, we are,

Very truly yours,

THE UNITED BANKER PUBL. CO.,
By CHAS. H. CROSS, *Pres.*

C. H. C.
—S.—

(Endorsed:) Filed Oct. 27, 1909. H. S. Stoddard, Clerk.

515 And on to-wit: the twenty-seventh day of October, 1909, come Edwin A. Potter, Receiver by his solicitors and adopts the answer of American Guaranty Company of Chicago to the petition of Edwin M. Keatley in words and figures following to-wit:

Edwin A. Potter Adopts the Answer of American Guaranty Company of Chicago to the Petition of Edwin M. Keatley.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

No. 29336.

CARRIE REBECCA FUREY et al.
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Now comes Edwin A. Potter, Receiver of American Guaranty Company of Chicago, and adopts the answer of the American Guaranty Company filed herein to the petition of Edwin M. Keately, as his answer to said petition.

EDWIN A. POTTER,
By LEVY MAYER,
His Attorney.

(Endorsed:) Filed Oct. 27, 1909. H. S. Stoddard, Clerk.

516 And on to-wit: the twenty-seventh day of October, 1909, come the Contract-holders' Committee by their solicitors and adopt the answer of American Guaranty Company of Chicago as their answer to the petition of Edwin M. Keatley in words and figures following to-wit:

Contract-holders' Committee Adopt the Answer of American Guaranty Company of Chicago as Their Answer to the Petition of Edwin M. Keatley.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof.

No. 29336.

CARRIE REBECCA FUREY et al.
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Now come A. E. Cross, Joseph F. Leaming L. K. Torbet and A. E. Taylor, constituting the contract-holders' Committee of American Guaranty Company of Chicago, and adopt the answer of the American Guaranty Company of Chicago, filed herein to the petition of Edwin M. Keatley, as their answer to said petition.

A. E. CROSS,
JOSEPH F. LEAMING,
L. K. TORBET,
A. E. TAYLOR,
Constituting the Contract-Holders' Committee of American Guaranty Company of Chicago,
By GORHAM & WALES,
Their Solicitors.

(Endorsed:) Filed Oct. 27, 1909. H. S. Stoddard, Clerk.

517 And on to-wit: the twenty-sixth day of January, 1910, there was filed in the clerk's office of said Court in said entitled cause a certain Opinion by Judge Kohlsaat, in words and figures following to-wit:

518 *Opinion.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Gen. No. 29336.

CARRIE REBECCA FUREY, as Executrix, et al.
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

KOHLSAAT, *J.:*

This cause is before the court upon the intervening petition of Edwin M. Keatley, as receiver appointed by the Circuit Court of

Kanawha County, West Virginia, on September 22, 1909, setting up want of jurisdiction in this court, and asking that the further administration of the cause be relegated to said Kanawha County Circuit Court, and that the assets now held by the receiver of this court be turned over to said Keatley as such West Virginia receiver. The petition is based upon the following state of facts:

The corporation defendant is a West Virginia corporation, created in July 1892. Its objects are stated by petitioner's counsel to be the issuance of service, investment, and income contracts. Its principal, if not only place of business, has been in Chicago in this district. On February 1, 1909, the owners of all the stock of the corporation which had been issued up to that date, by bill and by intervention, joined in a proceeding before the said Kanawha County Circuit Court, asking that court to decree a dissolution of the corporation defendant, for a receiver and for general relief. Said corporation thereupon entered its appearance and filed its answer consenting to the relief prayed. On February 1, 1909, the same day, said West Virginia court entered its decree therein, ordering that said corporation defendant "be, and it is hereby dis-
519 solved, and V. L. Black of Charleston, W. Va., is hereby appointed receiver of all and singular the property and assets of the American Guaranty Company, of every description, within the jurisdiction of this court, to have and to hold and to administer the same under the orders and direction of this court." The receiver was then directed to take possession of the property of the corporation defendant within the jurisdiction of the court after he had given bond.

On February 2, 1909, this suit, being in the nature of a creditors' bill, was instituted by the stockholders, to which the corporation entered its appearance and filed an answer consenting to the granting of the relief prayed for. A receiver was appointed and proceedings were at once had to reduce the assets of the defendant to possession, and such further action was had that at the present time a very large amount of moneys and other assets is in the receiver's hands, and well on the way to final administration. Large sums have been dealt with and more than 7,000 of the 7030 claims have been here presented, relying upon the jurisdiction of the court in the premises; so that whatever discretion the court may have should, in the interest of the creditors, if for no other reason, be exercised in favor of its jurisdiction. Since the filing of the bill herein, and on September 22, 1909, more than seven months thereafter, certain contract holders of the corporation defendant obtained leave of the said Kanawha County Circuit Court to intervene and become parties in the suit pending in that court, and an order was thereafter entered discharging the receiver, appointing a new receiver, and enlarging his jurisdiction so as to cover the assets of said defendant corpora-
tion wherever found. In pursuance of this order, this in-
520 tervening petition was filed. It seems to have been the opinion of the judge who appointed the original receiver that he had done wrong to creditors and contract holders in limiting the jurisdiction of the original receiver, and had failed to comply with

the West Virginia statutes, and that the statute was operative notwithstanding the limitation of his decree. Of course the jurisdiction of this court could not be affected by the order of September 22, 1909, when its receiver was in possession of and administering said assets. It therefore seems essential that the order of February 1, 1909, shall be held to be unaffected by the limitation contained within it, in order to create even a prima facie right in the intervening petitioner to obtain the relief he seeks herein. The contention is that the decree of the Kanawha County Circuit Court dissolving the corporation, so far ended its life as to deprive it of power to enter its appearance and consent to the appointment of a receiver in this court, that this suit and the proceedings thereunder are void, while at the same time it is insisted that the original receiver became de jure receiver of and entitled to reduce to possession all of the assets of said corporation, including those now held by the receiver of this court, by virtue of said decree of February 1, 1909, notwithstanding its terms.

The sections of the statute of West Virginia under which the intervenors claim that the Kanawha County Circuit Court proceeded reads as follows, viz.:

"SEC. 57. If not less than one-third in interest of the stockholders of a corporation desire to wind up its affairs, they may apply by bill in chancery to the circuit court of the county in which the principal office or place of business of such corporation is situated, or if there be no such office or place of business in this state, to the circuit court of the county in which the other stockholders or any one or more of them reside, or are found, or in which the property of such corporation or any part of it may be, setting forth in the bill the
521 grounds of their application; and the court may thereupon proceed according to the principles and usages of equity to hear the matter, and if sufficient cause therefor be shown, to decree a dissolution of the corporation, and make such orders and decrees and award such injunctions in the cause as justice and equity may require.

SEC. 58. When a corporation expires, or is dissolved, or before its expiration or dissolution, upon sufficient cause being shown therefor, such court as is mentioned in the preceding section may, on application of the creditor or stockholder, appoint one or more persons to be receivers to take charge of and administer its assets; and whether such receiver be appointed or not, may make such orders and decrees, and award such injunctions in the cause, as justice and equity may require. This section shall apply to corporations heretofore or hereafter chartered by another state, which may have done business and acquired property, or contracted debts, in this state, and any of whose creditors, or stockholders, or their personal representatives, reside herein; and the circuit court of any county wherein such creditor, stockholder, or personal representative, may reside, or where such assets or property or part thereof may be, or where the person owing such debts, or having such property in possession, may

reside, shall afford such relief as is prescribed in this and the next section.

SEC. 59. When a corporation shall expire or be dissolved, its property and assets shall, under the order and direction of the board of directors then in office, or the receiver or receivers appointed for the purpose by such circuit court as is mentioned in the fifty-seventh section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. And suits may be brought, continued or defended, the property, real and personal, of the corporation be conveyed or transferred under the common seal or otherwise, and all lawful acts be done in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto."

It will be seen that for certain purposes the corporation may bring suits, convey real and personal property of the corporation, and do all lawful acts in the corporate name, in the same manner as before dissolution, and with the same effect, so far as shall be necessary or proper for collecting the debts and claims due to the corporation, converting the property into money, protecting its rights, enforcing its liabilities, and paying over the same to those entitled thereto.

522

Does the act of the company in entering its appearance to this suit come within the meaning of the provisions of Sec. 59 just enumerated, and had the corporation the power to enter its appearance herein and consent to the granting of the relief prayed? Was the proceeding here a necessary or proper and lawful act done in the corporate name for collecting the debts and claims due to the corporation, conserving its rights, enforcing its liabilities, and paying over and distributing its property to those entitled to it? It will be observed that the powers above enumerated are not in terms conferred on the receiver. The company has a legal entity to the extent set out. Sec. 57 provides that upon dissolution being decreed the court may "make such orders and decrees * * * in the cause as justice and equity may require." Sec. 58 makes the provisions of the section applicable to foreign corporations doing business in that state without reference to any proceeding to wind up the same instituted in the domicile thereof. It may be pertinent to inquire by what construction the power of a receiver as there enumerated should be any greater with reference to local corporations than with foreign corporations, so far as the language of that statute is concerned. There can be no pretence that the receiver would take control in the state of the domicile of the foreign corporation.

The bill filed herein sets up diversity of citizenship and sufficiency

of the amount involved. It further alleges that the Guaranty
523 Company is indebted to complainant Furey's executrix in a large sum; that the said corporation was dissolved by order of said Kanawha County Circuit Court and a receiver appointed to take charge of effects within the state of West Virginia; that by virtue of the order of dissolution, the Guaranty Company became trustee for its creditors and stockholders; that the West Virginia receiver has no power to act outside of West Virginia, and that the complainants file their said bill on behalf of themselves and all other stockholders and creditors who may ask leave to join. The other allegations are in the main the same as those of the Kanawha County bill.

Assuming that the proceeding in West Virginia was under the Sections of the statutes of that state above quoted, what was the effect of the order of the Kanawha County court entered February 1, 1909?

1. Did it deprive the Guaranty Company of all authority to enter its appearance and consent to the granting of the prayer of the bill herein?

2. Did it invest the receiver with any further authority than that expressed therein?

As to the first point, the language of the West Virginia statutes gives the court discretion to "make such orders and decrees * * * as justice and equity may require." Either before or after dissolution the court has power on sufficient cause shown, and at its discretion, to appoint a receiver to take charge of and administer its assets. It is not required to do so. The corporation is authorized, as I read the statute, even when a receiver has been appointed, to act under its corporate seal and in its corporate name in like manner and with like effect as before dissolution, but only so far as is
524 necessary or proper in reducing the property to possession and administering it according to law. It is the assumption of the counsel for the intervening petitioner that when the first West Virginia receiver was appointed, the corporation died, and could not be heard to assert its existence by doing any act in a foreign jurisdiction. The law, however, is as stated by Thompson on Corporations, Sec. 7370, viz.: "After a corporation becomes dissolved, it can neither sue nor be sued, unless the faculty of suing or being sued is prolonged by statute for the purpose of winding up its affairs."

The order of the court dissolving the corporation was based upon the statute in that case provided, as otherwise the court might not take jurisdiction to that end; but applying the rule above cited from Thompson on corporations, does the case come within the doctrine asserted by petitioners, viz., that a dissolved corporation is a corpse? Does not the statute prolong the faculty of suing or being sued for the purpose of winding up its affairs, and is not the present suit a proceeding for that purpose? State v. Laurel Fork Oil & Coal Co. 47 W. Va. 838 and Swing v. Bentley & Gerwig F. Co. 45 W. Va. 283, do not seem conclusive to the contrary. On the other hand in

Miller's Admx. v. Newburg Orrel Coal Co. 31 W. Va. 798, the court says of the then statute, which is in substance the same as that under consideration, that—"This language is certainly sufficiently comprehensive to embrace any suit whether at law or in equity, which is proper for collecting the debts due to, or enforcing the liabilities against the corporation."

In Olmstead v. Distilling & Cattle Feeding Co. 73 Fed. 44, the court holds that the corporation itself became a trustee for
525 the creditors and stockholders as soon as the judgment of ouster was rendered. In that case no receiver had been appointed. The Circuit Court of Appeals for the first circuit, in White Mountain Paper Company v. Morse & Co. 127 Fed. 643 says in construing language in substance like that of the West Virginia statute:

"Even if, under such legislation, from the time of the nominal dissolution, no judgment could be rendered against the corporation according to the statutes of the state of its domicile, foreign tribunals, including federal courts and state courts, in exercising their appropriate jurisdiction, permit the corporation meanwhile to sue and be sued in its own name, and judgments to be entered for and against it accordingly." (Citing authorities.)

In Eau Claire Canning Co. v. The Western Brokerage Co., 213 Ill. 561, the court construed similar language in the statute of Michigan as permitting a corporation to sue and be sued after dissolution.

It is not clear that under the statute the title to the assets of a corporation in another jurisdiction vests in a receiver. In Great Western Mining and Mfg. Co. v. Harris, 198 U. S. p. 561, the court, citing Booth v. Clark, 17 Howard 322, affirms the doctrine that "a receiver is an officer of the court which appoints him and, in the absence of some conveyance or statute vesting the property of the debtor in him, he cannot sue in courts of a foreign jurisdiction upon the order of the court which appointed him, to recover the property of the debtor." The court further says: "There are exceptional cases such as Relfe v. Rundle, 103 U. S. 222, in which the entire property of the insolvent company was vested in the Superintendent of insurance of the state, where his authority did not come from the decree of the court and his right to sue was maintained." The cases cited by petitioner wherein statutory authority is vested in some particular official by statute, or in which the proceedings in dissolution
526 are carried on by state officials, or in which the authority to sue in other states is expressly given, are not deemed in point here.

With regard to the authority vested in the receiver by the order of February 1, 1909, it may be said that if the order appointing a receiver under the statute without any limiting conditions vests the absolute title to all the assets of the corporation wherever situated, why should the corporation be thereafter empowered to proceed under its corporate name and seal as though dissolution had not been decreed? Furthermore, the West Virginia statutes are very liberal. The court may or may not appoint a receiver. It required the decree of the court to do so. The court, it seems to me, had discretion

to appoint him for the property in its own jurisdiction, in view of the language of the statute. If it was powerless to do so, it yet required the order of the court to extend his power over property in other jurisdictions. It would be a strained construction of the act to hold that the receiver, being appointed, could shake off the conditions upon which he secured the appointment and lay claim to authority expressly withheld from him by the order. It could, with equal justification, be claimed that the order was either good as entered or void in toto.

So I am constrained, under the circumstances, to hold that at the date of the institution of this suit, the West Virginia receiver was not vested with control and title to the property in the possession of the receiver herein, but that the same was, at most, held by the corporation in trust for creditors and stockholders; that this court, being a court of equity, has jurisdiction in the premises. The claim
527 that the jurisdiction of this court was in any manner affected by the September order of the West Virginia court does not appeal to me as well founded. Nor is it clear how the creditors and stockholders can be injured by the administration. In the interest of comity, I should gladly, in a proper case, release jurisdiction at the request of a brother judge, especially since he seems to feel personally at fault for the present situation. Believing, however, that his action was wise, and desiring to cooperate with him in doing all that a court of equity may to conserve the rights of creditors and stockholders, and feeling as I do that to grant the motion of the petitioner would be unjust to them, and seeing no reason why any complications should result, I am, of the opinion that the prayer of the intervening petitioner should be and it is denied.

(Endorsed:) Filed Jan. 26, 1910. H. S. Stoddard, Clerk.

528 And on to-wit: the Seventh day of February, 1910, being one of the days of the regular December term of said Court, 1909, in the record of proceedings thereof, in said entitled cause before the Hon. C. C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

Decree of February 7, 1910, Dismissing Intervening Petition of Edwin M. Keatley.

29336.

CARRIE REBECCA FUREY et al.
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

There having heretofore come on to be heard the intervening petition heretofore filed herein by Edwin M. Keatley, of Charleston, West Virginia, claiming to have been appointed receiver of said American Guaranty Company of Chicago, by the Circuit Court of Kanawha County, West Virginia, and the exhibits attached to said intervening

petition; also the answers and exhibits thereto heretofore filed herein to said intervening petition by said American Guaranty Company of Chicago, by Edwin A. Potter, heretofore appointed herein receiver of said American Guaranty Company of Chicago, by A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting the Contract-holders' Committee of said American Guaranty Company of Chicago, and by said Carrie Rebecca Furey and Caroline La Tour Furey, complainants herein; and there having heretofore also come on to be heard at the same time the motion of said intervening petitioner, orally made in open court, for an order herein to direct said Edwin A. Potter Receiver herein, to turn over the property, assets and effects of said American Guaranty Company of Chicago,
529 in the possession, custody and control of said Edwin A. Potter, Receiver, to said intervening petition, Edwin M. Keatley; and the court having heretofore heard the respective arguments of Messrs. Thomas H. Gill, F. W. Houghton, George B. Edgerton and Chilton, McCorkle & Chilton, solicitors and of counsel for said intervening petitioner, and of Levy Mayer, Esq., solicitor and of counsel for said Edwin A. Potter, Receiver herein and the court having heretofore taken all of said matters under advisement and now having duly considered the same, and being fully advised in the premises, Finds: that it has jurisdiction in the premises,

That there is no equity in said intervening petition or in said motion, and that said intervening petitioner, Edwin M. Keatley, is not entitled to any of the relief prayed for in said intervening petition or in said motion.

Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said intervening petition and the said motion, and each of them, shall be and the same are hereby overruled and denied, and the said intervening petition is hereby ordered to be and the same is hereby dismissed.

530 And on to-wit: the sixth day of May, 1910 come Edwin M. Keatley, by his solicitors and filed in the clerk's office of said Court, his certain petition for appeal, in words and figures following to-wit:

Petition for Appeal.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division Thereof.

In Equity. 29336.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and Also in Her Own Right, and Caroline La Tour Furey, Complainants, Respondents,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant; EDWIN M. Keatley, as Receiver under Appointment of the Circuit Court for Kanawha County, West Virginia, Intervenor.

Petition for Appeal.

The above named Intervenor, Edwin M. Keatley, conceiving himself aggrieved by the order and decree entered on the 7th day of February, A. D. 1910, in the above entitled proceeding, dismissing his intervening petition herein, based solely upon the ground that this Honorable Court has never obtained jurisdiction of the person of the defendant, American Guaranty Company of Chicago, because of the lack of service of process on said defendant, and because no proper or legal voluntary appearance by said defendant
531 was or could be made herein, doth hereby appeal from said order and decree to the Supreme Court of the United States, and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree were made, together with the written opinion of the Honorable Christian C. Kohlsaat, on such question of jurisdiction rendered but not filed herein, duly authenticated, may be sent to the Supreme Court of the United States.

Milwaukee, Wisconsin, March 5th, 1910.

THOS H. GILL,
GEO. B. EDGERTON,
CHILTON, MACCORKLE & CHILTON,
F. W. HOUGHTON,
Solicitors for Edwin M. Keatley, as Such Receiver and Special Intervenor (Appellant).

(Endorsed:) Filed May 6, 1910. H. S. Stoddard, Clerk.

532 And on the same day to-wit: the sixth day of May, 1910 come Edwin M. Keately, as Receiver by his solicitors and filed in the Clerk's office of said Court in said entitled cause his certain assignment of errors, in words and figures following to-wit:

Assignment of Errors.

Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

In Equity.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased and also in Her Own Right and Caroline La Tour Furey, Complainants, Respondents,

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant; EDWIN M. Keatley, as Receiver Under Appointment of the Circuit Court for Kanawha County, West Virginia, Intervenor, Appellant.

Assignment of Errors.

And now at the same term, comes Edwin M. Keatley, as receiver, etc., Appellant, and makes and files the following as his assignment of errors, to-wit:

1st. The Circuit Court of the United States, for the Northern District of Illinois, Eastern Division, erred in taking jurisdiction of and over the person and property of the defendant American Guaranty Company of Chicago, after the decree of dissolution of, and appointment of a receiver for said defendant, entered pursuant to express statute, by a court of competent jurisdiction in the state of defendant's domicile, such jurisdiction of the said Circuit Court of the
533 United States, resting solely upon a pretended appearance by attorneys for said defendant, appointed as such before said dissolution, and a similar pretended, voluntary appearance by the former President and Secretary of said defendant corporation.

2nd. The said Circuit Court of the United States erred in making and entering its order and decree herein, dated February 7th, 1910, denying and dismissing the petition and motion of Edwin M. Keately as receiver of said defendant corporation appointed by the said State Court, for right to intervene and have and receive as such officer, the property and assets of said defendant corporation now in possession of said Circuit Court of the United States.

CHILTON, McCORKLE & CHILTON,
GEO. B. EDGERTON, T. H. GILL, AND
F. W. HOUGHTON,
Solicitors for Appellant.

(Endorsed:) Filed May 6, 1910, H. S. Stoddard, Clerk.

534 And on to-wit; the sixth day of May, 1910, being one of the days of the regular December term of said Court, 1909, in the record of proceedings thereof, in said entitled cause before the Hon. C. C. Kohlsaat, Circuit Judge, appears the following entry to-wit;

Order of May 6, 1910, Allowing Appeal Upon Filing Bond.

29336.

CARRIE REBECCA FUREY et al.
vs.
AMERICAN GUARANTY COMPANY OF CHICAGO.

Now comes Edwin M. Keatley, by his solicitors, and presents his petition for appeal and assignment of errors, praying an appeal to the United States Supreme Court from the order and decree entered herein on February 7, 1910.

This court is of the opinion that no question of jurisdiction is involved in said order and decree, but allows said appeal without certifying to any jurisdictional question, upon the said Keatley filing an appeal bond in the sum of Five Hundred Dollars ($500.) with surety to be approved by the court.

535 And on to-wit: the twenty-third day of May, 1910, come Edwin M. Keately as receiver of American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, West Virginia, as principal and American Surety Company of New York, as surety and filed in the clerk's office of said Court in said entitled cause a certain bond on appeal in words and figures following to-wit:

Bond on Appeal.

Know all men by these presents, that *we* Edwin M. Keatly, as Receiver of American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, West Virginia, as principal. *are* held and firmly bound unto Edwin A. Potter, as receiver of the American Guaranty Company of Chicago, (appointed by the United States Circuit Court for the Northern District of Illinois, Eastern Division thereof) in the full and just sum of five hundred dollars to be paid to the said Edwin A. Potter as receiver of American Guaranty Company of Chicago (appointed by the United States Circuit Court for the Northern District of Illinois, Eastern Division thereof) and his successors, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, *we* bind *ourselves, our* heirs, executors and administrators and successors jointly and severally, by these presents. Sealed with *our* seals and dated this 18th day of May in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a regular term of the United States Circuit Court for the Northern District of Illinois, Eastern Division thereof, in a suit depending in said Court, between Carrie Rebecca Furey, as executrix, etc., et al. as complainants and American Guaranty Company of Chicago, defendant and Edwin M. Keately as receiver of American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, West Virginia, intervener and other in-

terveners, a decree was rendered against the said Edwin M.
536 Keately, as receiver of American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, West Virginia, intervener and the said Edwin M. Keately, as receiver of American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, West Virginia, intervener, having obtained an appeal and filed a copy thereof in the clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Carrie Rebecca Furey as executrix of the last will and testament of Charles La Tour Furey, deceased and also in her right, Caroline La Tour Furey, Edwin A. Potter as receiver of American Guaranty Company of Chicago, appointed by said United States Circuit Court and A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, contract-holders' Committee citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Edwin M. Keatley, as receiver of American Guaranty Company of Chicago, appointed by the Circuit Court of Kanawha County, West Virginia, shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EDWIN M. KEATELY, [SEAL.]
AMERICAN SURETY COMPANY
OF NEW YORK, [SEAL.]
By R. R. GILKEY, *Res. Vice-Pres't.* [SEAL.]

Attest:

[SEAL.] ROBERT F. BENNETT,
Res. Asst. Sec'y.

Sealed and delivered in presence of

M. C. MASTERSON.
A. V. FITZWATER.

Approved: May 23, 1910,

KOHLSAAT, *J.*

(Endorsed:) Filed May 23, 1910, John H. R. Jamar, Clerk.

537 *Præcipe for Transcript of Record.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division Thereof.

In Equity. 29336.

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in Her Own Right, and Caroline La Tour Furey, Complainants (Respondents),

vs.

AMERICAN GUARANTY COMPANY OF CHICAGO, Defendant; EDWIN M. Keatley, as Receiver under Appointment of the Circuit Court for Kanawha County, West Virginia, Intervenor (Appellant).

To H. S. Stoddard, Clerk of the United States Circuit Court for the Northern District of Illinois:

The above named Edwin M. Keatley, as receiver under appointment of the Circuit Court for Kanawha County, West Virginia, intervenor, appellant, herein respectfully requests that you prepare and properly certify a transcript of the following papers, orders and proceedings filed and had in this cause;

Bill of Complaint of Carrie Rebecca Furey, as Executrix, etc. et al. vs. American Guaranty Company of Chicago;

Proceedings in Circuit Court of Kanawha County brought into this Court by said complainants and referred to in paragraph 11 of said Bill of Complaint;

Appearance and Consent Answer of American Guaranty Company to such Bill of Complaint.

Order appointing Edwin A. Potter, receiver;

Petition of A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, for leave to intervene; as contract-holders' Committee;

Motion for leave to file such Intervening Petition;

Notice of hearing of motion for leave to file, etc.

Order granting such Contract-Holders' Committee leave to Intervene;

Petition of Edwin A. Potter, Receiver, vs. Royal Trust Company, requiring latter to turn over funds in its hands to Receiver;

538 Demurrer of Royal Trust Company to such petition of Edwin A. Potter, Receiver;

Intervening petition of Royal Trust Company as trustee;

Order over-ruling demurrer and granting leave to Royal Trust Company to intervene;

Notice and motion of Royal Trust Company for leave to file intervening petition;

Answer of Royal Trust Company to petition of Edwin A. Potter, Receiver;

Petition of Edwin A. Potter, Receiver for leave to file amended petition against Royal Trust Company;

Notice of hearing motion for leave to file amended petition;
Order granting leave to Edwin A. Potter, Receiver to file amended petition against Royal Trust Company;
Replication of Edwin A. Potter, receiver to intervening petition of Royal Trust Company;
Special Intervening Petition of Edwin M. Keatley, as receiver of American Guaranty Company of Chicago;
Notice of motion for leave to file such special intervening petition of Edwin M. Keatley, as receiver, etc.;
Order granting leave to Edwin M. Keatley as receiver, etc., to intervene;
Answer to special intervening petition of Edwin M. Keatley as receiver by American Guaranty Company of Chicago;
Answer to special intervening petition of Edwin M. Keatley as receiver etc. by Edwin A. Potter, receiver;
Answer to special intervening petition of Edwin M. Keatley as receiver, etc. by Contract-Holders' Committee;
Written Opinion of Hon. Christian C. Kohlsaat, giving reasons why special intervening petition of Edwin M. Keately should be denied, etc.;
539 Final decree denying petition of Edwin M. Keatley special intervenor and dismissing petition;
Petition for appeal;
Assignment of errors,
Order allowing appeal,
Bond for Appeal,
Citation.
Order requiring Royal Trust Company to turn over funds to Edwin A. Potter, as receiver.
For use on appeal in the Supreme Court of the United States, Dated May 23rd, 1910.

F. W. HOUGHTON,
THOS. H. GILL,
GEO. B. EDGERTON,
CHILTON, MacCORKLE & CHILTON,
Solicitors for Edwin M. Keatley, as Receiver, &c., Intervenor and Appellant.

(Endorsed:) Filed May 23, 1910. John H. R. Jamar, Clerk.

540 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court, made in accordance with Præcipe filed in the cause entitled Carrie Rebecca Furey, Executrix of the last Will and Testament of Charles La Tour Furey, deceased, and also in her own right, and Caroline La Tour Furey, Complainants vs. American Guaranty Company of Chicago, Defendant, as

the same appear from the original files and records thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the City of Chicago, in said District, this sixteenth day of June, 1910.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

JOHN H. R. JAMAR, *Clerk*.

541 UNITED STATES OF AMERICA, *ss.*:

To Carrie Rebecca Furey, as executrix of the last will and testament of Charles La Tour Furey, deceased, and also in her own right, Caroline La Tour Furey, Edwin A. Potter, as receiver of American Guaranty Company of Chicago (by appointment of the Circuit Court of United States, Northern District of Illinois, Eastern Division thereof), and A. E. Cross, Joseph F. Leaming, L. K. Torbet, and A. E. Taylor, as Contract Holders' Committee of American Guaranty Company of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal, filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division thereof, wherein Edwin M. Keatley, as receiver of American Guaranty Company of Chicago under appointment of the Circuit Court of Kanawha County, West Virginia, intervener, is appellant (and Carrie Rebecca Furey, as executrix of the last will and testament of Charles La Tour Furey, deceased, and also in her own right, Caroline La Tour Furey, complainants, Edwin A. Potter, as receiver of American Guaranty Company of Chicago by appointment of the Circuit Court of the United States, Northern District of Illinois, Eastern Division thereof, and A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor as Contract Holders' Committee of America Guaranty Company of Chicago, are respondents) and you are respondents, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States this 23rd day of May, in the year of our Lord one thousand nine hundred ten.

KOHLSAAT,
Circuit Judge.

[Endorsed:] No. —. Supreme Court of the United States. Carrie Rebecca Furey, etc., et al. vs. American Guaranty Company of Chicago, etc., et al. Citation to the Supreme Court of the United States.

542 Service of the within Citation admitted this 23rd day of May, A. D. 1910.

GORHAM & WALES,
Attorneys for Contract Holders' Committee.

Service of the within Citation admitted this 23rd day of May, A. D. 1910.

MAYER, MEYER, AUSTRIAN & PLATT,
Solicitors for Edwin A. Potter, as Receiver, &c.

Service of the with- Citation admitted this 23rd day of May, A. D. 1910.

STEERE, WILLIAMS & STEERE,
Attorneys for Complainants.

[Endorsed:] 29336. Supreme Court of the United States. Carrie Rebecca Furey, &c., et al. vs. American Guaranty Company of Chicago, &c., et al. Citation to the Supreme Court of the United States. Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed May 23, 1910. John H. R. Jamar, Clerk.

Endorsed on cover: File No. 22,233. N. Illinois C. C. U. S. Term No. 612. Edwin M. Keatley, as receiver of American Guaranty Company of Chicago, under appointment of the Circuit Court of Kanawha County, West Virginia, appellant, vs. Carrie Rebecca Furey, as executrix of the last will and testament of Charles La Tour Furey, deceased, and also in her own right; Edwin A. Potter, as receiver of The American Guaranty Company of Chicago, by appointment of the Circuit Court of the United States for the Northern District of Illinois, et al. Filed June 21st, 1910. File No. 22,233.

FILED
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

NO. 84.

EDWIN M. KRATLEY, as Receiver of American Guaranty Company of Chicago, under appointment of the Circuit Court of Kanawha County, West Virginia,

Appellant,

—vs—

CARRIE REBECCA FURRY, as Executrix of the Last Will and Testament of Charles La Verne Furry, Deceased, and also in her own right; and A. Foster, as Receiver of the American Guaranty Company of Chicago, by appointment of the Circuit Court of the United States for the Northern District of Illinois, et al.

BRIEF OF APPELLANT.

P. W. HOUGHTON,
GEORGE H. EDGERTON,
THOMAS H. GILL,
CHILTON, MAC CORKLE & CHILTON,
Attorneys for Appellant, Edwin M. Kratley, as Receiver of the American Guaranty Company of Chicago.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

NO. 84.

EDWIN M. KEATLEY, as Receiver of American Guaranty Company of Chicago, under appointment of the Circuit Court of Kanawha County, West Virginia,

Appellant,

—vs.—

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in her own right; Edwin A. Potter, as Receiver of the American Guaranty Company of Chicago, by appointment of the Circuit Court of the United States for the Northern District of Illinois, et al.

BRIEF AND ARGUMENT FOR APPELLANT ON THE MERITS.

THE APPEAL.

The appellees, Carrie Rebecca Furey, as executrix of the last will and testament of Charles La Tour Furey, deceased, and in her own right, and Caroline

L. Furey, complainants, as stockholders and creditors, and the two other stockholders defendants, by a suit in equity, in the United States Circuit Court for the Northern District of Illinois, procured the appointment of Edwin A. Potter, chancery receiver, to collect, take charge of and distribute the assets and property of the American Guaranty Company of Chicago, a former West Virginia corporation; such corporation had been theretofore dissolved by the decree of a State Court of competent jurisdiction in a stockholders' suit, at the domicile of the corporation, and a statutory receiver thereof appointed to take charge of and administer its assets.

No attempt was made to serve any process upon such dissolved corporation, but the former President and Secretary thereof, and Gorham & Wales, former attorneys, filed a consent answer to complainants' bill of complaint in such Federal Court in the same manner as two of the stockholders. Thereupon such receiver was appointed, qualified and took possession of the assets and property of such dissolved corporation.

The appellant, Edwin M. Keatley, as receiver of the American Guaranty Company of Chicago so appointed, in such dissolution suit, by the Circuit Court of Kanawha County, West Virginia, on leave first obtained, filed his special intervening petition in such suit in the United States Circuit Court, protesting the jurisdiction of such Circuit Court, as a Federal Court, of the person and property of such American Guaranty Company of Chicago.

After hearing had, such Federal Court found it had jurisdiction of such defendant, and made and entered its decree denying and dismissing such special intervening petition.

This is an appeal taken from such decree of the

United States Circuit Court, and it is taken under section five of the Act of March 3, 1891.

This appeal raises the question of the jurisdiction of such United States Circuit Court to appoint a chancery receiver to collect, take charge of and distribute the assets and property of a former corporation of West Virginia, which corporation by a decree of a court of competent jurisdiction in such state had been previously duly dissolved and a statutory receiver thereof appointed to take charge of and administer its assets under and in accordance with the Code of West Virginia, solely by the appearance and consent of such dissolved corporation by its former officers and former attorneys, and such appearance by the other stockholders.

The appeal was duly allowed, and

The Record shows the only question raised on this appeal is one of the jurisdiction of such United States Circuit Court as a Federal Court.

STATEMENT OF FACTS.

(All record references are to the printed pages.)

Last term the appellee receiver, Edwin A. Potter, made a motion to dismiss this appeal and submitted a written brief and argument, to which appellant receiver Keatley filed two briefs in reply, in one of which the facts were stated somewhat at length.

Nevertheless, for the convenience of this Court we shall state the facts the same as though such Motion to Dismiss had not been made.

AMERICAN GUARANTY COMPANY.

The American Guaranty Company of Chicago, a West Virginia corporation, was organized under the

laws of that state in July, 1892; its ultimate authorized capital stock was 5,000 shares of the par value of $100.00 each, of which only 962 shares has ever been issued.

It was incorporated for a period of 50 years; the principal office of said Guaranty Company, ever since its incorporation, has been in the city of Charleston, Kanawha county, West Virginia; its administrative offices have ever been in the city of Chicago, Illinois. Rec. pp. 3, 4 and 5.

Among the objects for which said company was incorporated was to enter into contracts with individuals, firms and corporations known as "investment," "service" and "income" contracts. Rec. p. 25.

That on February 1, 1909, such Company had outstanding in full force and effect, investment, service and income contracts having a contingent maturity value of $15,825,000.00, divided into, to-wit, $3,254,000.00 of investment and service contracts, and $12,571,000.00 of income contracts. Rec. p. 4.

That there were more than 6,500 of said contracts then outstanding held by more than 6,500 persons who lived in various parts of the United States, Canada and Mexico, and more than 1,500 of them lived in the state of Minnesota. Rec. pp. 4, 184.

That it was provided by the terms of said investment and service contracts that as security for the redemption of the same said Guaranty Company should have and keep in trust moneys and other securities to such an amount as shall at the time equal in the aggregate 75% of the cash value of said contracts as shown by the schedules appended thereto. That pursuant to the provisions so contained in said contracts said Guaranty Company had on deposit with the Royal Trust Company, a corporation of Illinois, on such 1st

day of February, 1909, in cash, bonds and other securities, $565,891.37. Rec. pp. 5, 263, 264.

In January, 1899, one Charles La Tour Furey became the Vice-President of the Company, and after June 23, 1903, until his death, he had exclusive management and control of the entire corporate business and affairs of such Guaranty Company. Rec. p. 5.

At his decease Furey owned 602 shares of the capital stock of said Guaranty Company; Lewis W. Pitcher, the Secretary, owned 260 shares; James L. Bigelow, the Treasurer, owned 100 shares.

The stock of Pitcher and Bigelow had been for several years prior to February 1, 1909, pledged to and held by the corporation as security for debts owing to the corporation by such secretary and Treasurer, respectively. Rec. p. 26.

Furey died testate, November 29, 1908, and by his will left all his capital stock to the appellees herein, Carrie Rebecca Furey, widow surviving, and Caroline La Tour Furey, daughter and only child of the deceased, residents of the city of Chicago, share and share alike. Rec. pp. 2, 3.

On February 1, 1909, the entire capital stock of such Guaranty Company, consisting of only 962 shares, was owned, 260 shares by said Lewis W. Pitcher, 100 shares by said James L. Bigelow, and 602 shares by said appellees, such executrix Carrie Rebecca Furey and Caroline La Tour Furey. Rec. p. 26.

On such February 1, all the assets and property of such corporation was personalty and consisted of cash in banks and other quick securities. That the total claimed assets and property of such Guaranty Company was on the 1st day of February, 1909, of the value of only $1,265,689.86, divided into two funds known as the Special Fund which consisted of

cash, bank deposits, and other quick securities of the value of $565,891.37; and the General Fund which consisted of $118,215.19 in cash and bank deposits; $431,583.30 in loans made to contract holders and secured by their contracts; and, notes, mortgages and bonds of the value of $150,000.00. Rec. pp. 263, 264.

On such 1st day of February the net liabilities of such Guaranty Company were $2,075,398.32; and its claimed net assets were $792,864.99, that is, its net liabilities exceeded its claimed net assets by $1,282,533.33. Rec. pp. 263, 264.

In other words, such Guaranty Company was then and there hopelessly insolvent.

That on January 30, 1909, and for several years prior thereto the Board of Directors of said Guaranty Company had consisted of Frederick M. Steele, Lewis W. Pitcher, James L. Bigelow, William George, William B. Hill, Byron M. Fellows, Frank Backus, John T. Powers and Charles La Tour Furey until the time of his death. Frederick M. Steele was the President. Rec. pp. 187, 188.

That none of said Board of Directors, except the said Furey, Pitcher and Bigelow, owned or held any of the capital stock of said company. Rec. pp. 187, 188.

That on the 30th day of January, 1909, a meeting of the Executive Committee of such Guaranty Company adopted the following resolution:

RESOLUTION APPOINTING ATTORNEYS.

"Resolved Further, That Messrs. Gorham & Wales, Attorneys of Chicago, Illinois, be and they are hereby retained, requested and directed to enter the appearance of said Company in any proceedings that may be instituted in any court,

State or Federal, sitting in Chicago, Illinois, and in such proceedings to consent to the appointment of a receiver or receivers to take charge of and administer the assets of said Company located in the State of Illinois or elsewhere, and to consent to the entry of any and all other orders and decrees in the cause that may be so instituted in Illinois, as they think proper or as justice and equity may require, *and throughout such proceedings last aforesaid to act for and on behalf of and represent said Company as its attorneys and solicitors therein.*" Rec. p. 218.

CODE OF WEST VIRGINIA.

Sections 57, 58 and 59 of Chapter 53 of the Code of West Virginia are the law under which the suit for dissolution was brought and the statutory receiver in West Virginia was appointed and hence we quote them in full.

"Sec. 57. If not less than one-third in interest of the stockholders of a corporation desire to wind up its affairs, they may apply by a bill in chancery to the circuit court of the county in which the principal office or place of business of such corporation is situated, or if there be no such office or place of business in this State, to the circuit court of the county in which the other stockholders or any one or more of them reside, or are found, or in which the property of such corporation or any part of it may be, setting forth in the bill the grounds of their application; and the court may thereupon proceed according to the principles and usages of equity to hear the matter, and if sufficient cause therefor be shown, to decree a dissolution of the corporation, and make

such orders and decrees, and award such injunctions in the cause as justice and equity may require."

"Sec. 58. When a corporation expires, or is dissolved, or before its expiration or dissolution, upon sufficient cause being shown therefor, such court as is mentioned in the preceding section may, on application of a creditor or a stockholder, appoint one or more persons to be receivers to take charge of and administer its assets; and whether such receiver be appointed or not, may make such orders and decrees, and award such injunctions in the cause as justice and equity may require. This section shall apply to corporations heretofore or hereafter chartered by another state, which may have done business and acquired property, or contracted debts in this State, and any of whose creditors, or stockholders, or their personal representatives, reside herein; and the circuit court of any county wherein such creditor, stockholder, or personal representative, may reside, or where such assets or property or part thereof may be, or where the person owing such debts, or having such property in possession, may reside, shall afford such relief as is prescribed in this and the next section."

"Sec. 59. When a corporation shall expire or be dissolved, its property and assets shall under the order and direction of the board of directors then in office or the receiver or receivers appointed for the purpose by such circuit court as is mentioned in the fifty-seventh section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of wind-

ing up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. And suits may be brought, continued or defended, the property, real or personal, of the corporation be conveyed or transferred under the common seal or otherwise, and all lawful acts be done in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto."

SUGGESTED OF SECTION 59,

I. WHEN NO RECEIVER HAS BEEN APPOINTED.

"Sec. 59. When a corporation shall * * * be dissolved, its property and assets shall under the order and direction of the Board of Directors then in office * * * be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution, among the stockholders according to their respective interests. And (to that end) suits may be brought, continued or defended, the property, real or personal of the corporation be conveyed or transferred, etc., *in the corporate name.*"

II. WHERE A RECEIVER HAS BEEN APPOINTED.

"Sec. 59. When a corporation shall * * * be dissolved, its property and assets shall under the order and direction OF * * * the receiver or receivers appointed for the purpose by such Circuit Court as is mentioned in the 57th section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their interests. And (to that end) suits may be brought, etc."

PLAN.

Notwithstanding such provisions of sections 57, 58 and 59 of Chapter 53 of Code of West Virginia, the four stockholders of the insolvent corporation on the 30th of January, 1909, together with the President and the attorneys, Gorham & Wales, and the counsel for the receiver, Edwin A. Potter, herein, formed a plan as follows:

To bring a suit in equity in the Circuit Court of Kanawha County, West Virginia, for the *dissolution* of such corporation under the Code, and the *appointment* of a statutory receiver, who should be *shorn* of his *power* by limitations in the order appointing him. And that this should be done on papers all prepared so that the Court might do its business in a very few minutes and before anybody outside of the stockholders and the attorneys could learn of it. And immediately following this dissolution to begin another action in the Federal Court at Chicago to appoint another receiver who was to get control of all the

property of the corporation and such special fund, and distribute it to the contract holders and stockholders if any was left. And all this without giving any notice whatever to the contract holders to whom the insolvent corporation was indebted at such time more than two millions of dollars, and had claimed assets of no more than the value of about $792,864.99. Rec. pp. 217, 218 and 219.

Accordingly, the following was done:

FIRST.

SUIT IN EQUITY FOR DISSOLUTION AND APPOINTMENT OF STATUTORY RECEIVER IN KANAWHA COUNTY CIRCUIT COURT, WEST VIRGINIA. Rec. pp. 23-51; 139-162.

On February 1, 1909, such two appellees, Carrie Rebecca Furey, as executrix, etc., and in her own right, and Caroline La Tour Furey by her next friend, as complainants, filed their bill in equity in the Circuit Court of Kanawha County, West Virginia, against the American Guaranty Company of Chicago, defendant. They made formal allegations in such bill showing that they were the owners of 602 shares of the capital stock of such Guaranty Company and that only 962 shares of such stock was then outstanding, that the remaining 360 shares were owned by Lewis W. Pitcher and James L. Bigelow, and alleged as cause for such dissolution the death of the general manager, who was also chairman of the Board of Directors and vice-president from 1903, the inability and lack of experience of complainants to manage such corporate affairs, and that no one else could be found capable to take the place of such general manager deceased.

And pray: "That this Court decree a dissolution of said American Guaranty Company of Chicago, and make such orders and decrees, and award such injunctions in the cause as justice and equity may require; *and appoint one or more persons to be receivers, to take charge of and administer the assets of said defendant Company,* and grant such other and appropriate relief as may be proper in the premises." Rec. p. 28.

Such bill was verified on the 30th day of January, 1909, and signed by Hal C. Bangs, Brown, Jackson & Knight, solicitors for complainants.

With such bill was filed the following:

CONSENT ANSWER OF AMERICAN GUARANTY COMPANY.

"(Title.)

The American Guaranty Company of Chicago, defendant in the above entitled cause, hereby enters its appearance herein and consents to the granting of the prayer contained in said bill of complaint and to the entry of the decree of dissolution of said American Guaranty Company of Chicago, *and to the appointment of a receiver to take charge of and administer its assets,* and to the entry of such other orders and decrees, and to the awarding of such injunctions in the case as equity and justice may require.

American Guaranty Company of Chicago.
By Frederick M. Steele, President.
Angus W. McDonald, Sol. for
American Guaranty Company.

Attest:
L. W. Pitcher,
(Seal.) Secretary."

Rec. p. 29.

That filed with such bill for dissolution was the following:

"(Title.)

Lewis W. Pitcher and James L. Bigelow join as complainants in the above and foregoing bill of complaint, and request that the prayer thereof be granted.

Lewis W. Pitcher,
James L. Bigelow.
By Hal C. Bangs,
Their Attorney."

(Title.)

Lewis W. Pitcher and James L. Bigelow, being the same persons named in the above and foregoing bill of complaint, hereby state that they have heard read the bill and know its allegations and prayer; that the said allegations are true and that the prayer thereof ought to be granted, and they consent to the granting of the same; that the granting of said prayer is to the best interests of said American Guaranty Company of Chicago and to all of its stockholders and creditors, *and they respectively request that the said court shall grant the decree of dissolution of said American Guaranty Company of Chicago and appoint a receiver to take charge of and administer its assets*, and make such other orders and decrees and award such injunctions in the cause as equity and justice may require.

Lewis W. Pitcher,
James L. Bigelow." Rec. p. 30.

That immediately such Circuit Court of Kanawha County, West Virginia, made and entered the following *ready prepared* decree, to-wit, on February 1, 1909.

DECREE OF DISSOLUTION, ETC.

"(Title.)

Now comes on to be heard the application of the complainants in the above entitled cause, for a decree of dissolution of the American Guaranty Company, a corporation organized and existing under the laws of the state of West Virginia, and for the appointment of a receiver of said American Guaranty Company, and the court having seen and inspected the bill of complaint herein, and the joinder therein as plaintiffs by Lewis W. Pitcher and James L. Bigelow, which bill and joinder are here ordered to be filed, and it appearing that the complainants represent more than one-third in interest of the stockholders of the American Guaranty Company and that all the stockholders have notice hereof and consent to the entry of this decree, by writing here filed, and that the American Guaranty Company has entered its appearance herein and has due notice hereof, the Court finds:

That the prayer of the bill of complaint herein should be granted, and

It is hereby ordered, adjudged and decreed, that the said American Guaranty Company, be and it hereby is dissolved, and V. L. Black, of Charleston, West Virginia, is hereby appointed receiver of all and singular the property and assets of the American Guaranty Company of every description within the jurisdiction of this court, to have to hold and to administer the same under the orders and directions of this court. *All the creditors of said American Guaranty Company are hereby enjoined from interfering or meddling, with any of the property of said American Guar-*

anty Company. The receiver is hereby directed to take all and such steps as may be necessary to secure possession of the property of the American Guaranty Company within the jurisdiction of this court, and to apply to this court for any and such further directions as to him may seem necessary, but before entering upon the discharge of his duties in this behalf said receiver shall give bond with approved security before the clerk of this court in the penalty of $5,000.00 conditioned according to law." Rec. p. 53.

SECOND.

BILL OF COMPLAINT FILED IN UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION. Rec. pp. 1-56.

On the 2nd day of February, 1909, the same parties who were plaintiffs in such dissolution suit, filed their bill of complaint in the United States Circuit Court, Northern District of Illinois, against American Guaranty Company of Chicago, and the two other stockholders, James L. Bigelow and L. W. Pitcher, who appeared voluntarily at once and filed a consent answer therein.

The ground of federal jurisdiction alleged was diversity of citizenship, the plaintiffs citizens of Illinois; and the defendant, such Guaranty Company, notwithstanding such dissolution, was alleged to be a *citizen of and doing business* in West Virginia. Rec. pp. 2, 6.

It was therein alleged in effect that such defendant was solvent. Rec. p. 3.

All the allegations of the bill for dissolution were again alleged in this second bill.

It was also averred, in substance, in the second bill that the American Guaranty Company was indebted to the late Charles La Tour Furey on contract for commissions in the sum of $14,798.42.

All proceedings in the Circuit Court of Kanawha county by which said corporation was dissolved and such statutory receiver appointed were alleged.

Also a certified copy of all the proceedings in the Circuit Court of Kanawha county in such suit for dissolution were brought into such Federal Court and vouched for.

It was further alleged in such second bill that in consequence of the entry of said decree of dissolution said Guaranty Company has become a trustee for its creditors and stockholders of all its property, assets and effects. (This allegation notwithstanding the provisions of section 39 of Chapter 53 of the Code of West Virginia.)

It was also alleged in such bill in the Federal Court:

> "On account of such decree of dissolution * * * that some of the holders of said contracts threaten, as your orators are informed and believe and state the fact to be, that they will commence suits by attachment, or otherwise, against said Guaranty Company and levy upon its said property, assets and effects so situated in said state of Illinois, and that by means of such attachments, priorities will be secured by some of the contract holders over others; that interminable, complicated and costly litigation will ensue and the property, assets and effects of said Guaranty Company will be wasted and destroyed to such a degree as to make the same utterly

inadequate and insufficient, unless such property, assets and effects are taken possession of by a receiver to be appointed by this Court to conserve and distribute the estate of said Guaranty Company among those entitled thereto." Rec. p. 7.

"That your orators file this, their bill of complaint, *not only on behalf of themselves but also on behalf of all other stockholders of said Guaranty Company, and of all other creditors thereof* who may ask and secure leave to intervene herein and become parties hereto." Rec. p. 7.

Then follows the general prayer which is in substance a prayer for an accounting and the appointment of a chancery receiver, to take charge of all the assets of the American Guaranty Company to the end that the same may be finally distributed first to the creditors and the remainder, if any, to the stockholders.

WHAT JURISDICTION THE UNITED STATES CIRCUIT COURT ACQUIRED AND HOW.

No process of any kind was served or attempted to be served upon the American Guaranty Company in such Federal Court.

However, at the same instant the following was filed with such bill of complaint, viz:

CONSENT OF AMERICAN GUARANTY COMPANY, ETC.

"(Title.)

Now comes said American Guaranty Company of Chicago, and confesses each and all of

the allegations contained in the bill of complaint filed herein to be true, and that said complainants are entitled to the relief therein prayed, and consents to the appointment forthwith by this Honorable Court of a receiver of all the property, assets and effects of every description of said American Guaranty Company of Chicago, and to the entry of such further orders and decrees from time to time, in the premises, as the Court may deem proper.

American Guaranty Company of Chicago,
By Frederick M. Steele, President.
American Guaranty Company of Chicago,
By Gorham & Wales, Its Solicitors.

Attest:

L. W. Pitcher, Secretary.
(Corporate Seal.)

Rec. p. 56.

At the same instant was also filed:

"(Title.)

Now comes Lewis W. Pitcher and James L. Bigelow, the owners respectively of 260 shares and 100 shares of the capital stock of said American Guaranty Company of Chicago, as alleged in the bill of complaint herein, and consent to said Honorable Court granting the relief prayed for in said bill, and to the appointment forthwith of a receiver of all the property, assets and effects of every description of said American Guaranty Company of Chicago.

Lewis W. Pitcher,
James L. Bigelow."

Rec. p. 254.

And thereupon and at once the Court made the order appointing Edwin A. Potter receiver of such Guaranty Company, who was present in court, and then and there forthwith qualified as such receiver. Rec. pp. 57, 58, 254, 255, 256.

Carrying out the plan made by such stockholders and attorneys on January 30, 1909, they proceeded as follows:

THIRD.

PROCEEDINGS IN FEDERAL COURT SUBSEQUENT TO FEBRUARY 2, 1909. GORHAM & WALES, SOLICITORS.

On the 6th of February, 1909, notice of a motion for leave for the Contract-Holders' Committee to intervene in such equity suit in the Federal Court as one of the defendants, signed by Gorham & Wales, solicitors for such Contract-Holders' Committee, was served on the solicitors for such receiver, Potter. Rec. p. 60.

On the 8th of February, 1909, a petition of such Contract-Holders' Committee for leave to intervene in such suit, signed by Gorham & Wales, their solicitors, was filed in such court. Rec. p. 59.

On the same date leave was given to said Contract-Holders' Committee to intervene in such action. Rec. p. 61.

PETITION OF EDWIN A. POTTER AS RECEIVER AGAINST ROYAL TRUST COMPANY TO REQUIRE THE LATTER TO TURN OVER FUNDS IN ITS HANDS AND BE MADE A PARTY DEFENDANT.

(Funds in its hands $565,891.37.) Rec. pp. 61-65, 263, 264.

On the 13th of February, 1909, Mr. Potter, as such receiver, filed his petition against the Royal Trust Company, a corporation of Illinois, asking among other things that such Trust Company be made a party defendant and be ordered to turn over to such Potter, receiver, the "*Special Fund*" belonging to the contract holders, which such Trust Company held in trust.

DEMURRER OF ROYAL TRUST COMPANY TO PETITION OF EDWIN A. POTTER. Rec. pp. 90, 91.

On the same 13th day of February, 1909, the Royal Trust Company appeared voluntarily and demurred to the petition of said Potter, receiver.

LEAVE GIVEN ROYAL TRUST COMPANY TO FILE INTERVENING PETITION.

On February 19, 1909, an order was entered in such Federal Court granting leave to such Royal Trust Company to file an intervening petition. Rec. p. 92.

That on the same day such Contract-Holders' Committee filed an intervening petition in which they prayed such court to order Royal Trust Company to turn over such special fund to receiver Potter. Rec. pp. 233, 91.

ORDER OVERRULING DEMURRER OF ROYAL TRUST COMPANY.

On February 27, 1909, an order was entered in

such Federal Court overruling the demurrer of such Royal Trust Company. Rec. p. 91.

REPLICATION OF RECEIVER TO PETITION AND ANSWER OF ROYAL TRUST COMPANY. Rec. pp. 125-126.

On the 6th of March, 1909, Mr. Potter as such receiver filed his replication to such petition and answer of the Royal Trust Company in such Federal Court. Rec. pp. 125, 126.

DECREE DIRECTING ROYAL TRUST COMPANY TO TURN OVER THE SPECIAL FUND TO THE RECEIVER POTTER. Rec. pp. 260-262.

On the same 6th day of March, 1909, such Federal Court made and entered its decree directing such Royal Trust Company to turn over to Edwin A. Potter, as such receiver, the "Special Fund" of the value of $565,891.37, and allowed it to retain out of such Special Fund the sum of $2,000.00 "for such charges, compensation, cost, expenses, solicitors and counsel" incurred by such Royal Trust Company for so consenting to turn over such fund.

REPORT OF EDWIN A. POTTER AS SUCH REREIVER.

On the 26th of March, 1909, the said Edwin A. Potter, as such receiver, made and filed his report, showing an inventory of the assets and schedule of the liabilities of said American Guaranty Company. Rec. pp. 262-265.

This appears to be the first notice to the public

or to the creditors that such Guaranty Company was insolvent.

In the report of said receiver Potter three theories are advanced in reference to the liabilities.

The net assets in each case are placed at $792,-864.99.

By the first theory, the net liabilities are $1,085,-755.95.

By the second theory, the net liabilities are $2,075,298.32.

By the third theory, the net liabilities are many millions.

However, by the first theory, the assets are less than the liabilities by $292,990.96.

By the second theory, there is a deficiency of $1,282,533.33.

By the third theory, there would be a deficiency of several millions. Rec. p. 264.

FOURTH.

REMOVAL OF RECEIVER V. L. BLACK AND APPOINTMENT OF RECEIVER EDWIN M. KEATLEY.

On the 22nd day of September, A. D. 1909, W. R. Gilliam, leave being granted, filed his petition in such dissolution suit in the Circuit Court of Kanawha County, West Virginia, on behalf of himself and other contract holders and creditors of the American Guaranty company. Rec. pp. 183-208.

Mr. Gilliam stated in such petition, among other things, in substance, that he was the owner of five written contracts issued by said Guaranty Company not matured, of the aggregate maturity value of $12,-500.00; that he also appeared in behalf of 86 other

contract holders, who held contracts in such Guaranty Company of the aggregate maturity value of more than $450,000.00.

That petitioner is a further creditor of such Guaranty Company to the amount of $49,682.00 on contracts for renewal commissions on 1,508 outstanding investment and service contracts held by 1,508 contract holders in the state of Minnesota, of the aggregate maturity value of $3,846,000.00, which contracts were secured for such Guaranty Company by said Gilliam and partner while general agents for such Company in the state of Minnesota.

That in such petition said Gilliam informs the Circuit Court of Kanawha County of all the proceedings of said Guaranty Company in the Federal Court in Chicago and presents reasons for the removal of V. L. Black as receiver, and

> "Prays that he be allowed to intervene on behalf of himself and on behalf of the other creditors and contract holders of the said defendant corporation, in whose behalf he appears, and on behalf of all other contract holders and creditors of said defendant corporation similarly situated, and that he and they be made parties defendant to this cause and be permitted to answer the bill, and to take such other steps to protect their interests herein as may be necessary and as equity may require. That the receiver heretofore appointed herein, to-wit, V. L. Black, be discharged as such receiver. * * * That the jurisdiction of the Receiver * * * be enlarged and extended so as to embrace jurisdiction, control, ownership and management of the entire assets. * * * That this cause be referred to a commissioner in chancery, etc. * * * That the

Court authorize said Receiver to employ counsel. * * * Rec. pp. 195, 196.

That thereupon an

ORDER AND DECREE REMOVING V. L. BLACK AS RECEIVER AND APPOINTING EDWIN M. KEATLEY AS RECEIVER IN HIS PLACE was made and entered by the Circuit Court of Kanawha county. Rec. pp. 179-182. That by such decree:

"It is, therefore, adjudged, ordered and decreed that V. L. Black, who was, by a decree entered in this cause on the first day of February, 1909, appointed Receiver of the defendant, American Guaranty Company, be, and he is hereby discharged as such Receiver, and that Edwin M. Keatley is hereby appointed Receiver of the said American Guaranty Company to take custody, possession and control of all and singular the property and assets of the said American Guaranty Company wherever the same may be situated or located * * * and hold the same subject to the provisions of the statutes of West Virginia, under the orders of this Court, and to the payment of the liabilities of the corporation and the expenses of winding up its affairs, and the surplus, if any, to distribute among the stockholders of the said American Guaranty Company according to their respective interests as the Court may hereafter direct; and the said Receiver is hereby given power and authority to institute and prosecute to final judgment and decree any and all needful actions at law, suits in equity or other proceedings which may be necessary to bring under his jurisdiction and bring into his possession, custody and control any of the said property and

assets wherever the same may be found; and * * *

"The defendant, American Guaranty Company, under the provisions of section 59 of Chapter 53 of the Code of West Virginia, is hereby ordered and directed to make, execute and deliver an apt and proper deed, conveyance, transfer or assignment conveying to the said Receiver this day appointed, all of the property and assets of said American Guaranty Company, wherever the same way be situate. * * *" Rec. pp. 180, 181.

"In the event that the American Guaranty Company shall fail to file with the papers in this cause within 15 days from this date, an apt and proper deed, conveyance, transfer or assignment, conveying to the Receiver this day appointed, all of the property and assets of said American Guaranty Company, wherever the same may be situated, then that T. S. Clark, who is hereby appointed a special commissioner for that purpose, shall make, execute, acknowledge and deliver for record for and on behalf of the said American Guaranty Company, an apt and proper deed, conveyance, transfer or assignment, conveying to the said Receiver this day appointed, all of the property and assets of said American Guaranty Company, wherever the same may be situated, but before making any such deed, said special commissioner shall submit the same to the Court for approval, etc." Rec. p. 182.

That it was also provided in such decree that such receiver should qualify by executing a proper bond in the penal sum of $250,000.00.

Edwin M. Keatley duly appeared on the 27th day

of September and filed his bond for $250,000.00 in the Circuit Court of Kanawha county, which bond was acknowledged before and approved by the said S. C. Burdett, Judge of said Court, on such date.

ORDER TO AMEND. Rec. pp. 210, 211.

DEED TO EDWIN M. KEATLEY.

On the 9th day of October, A. D. 1909, T. S. Clark, special commissioner, duly made a deed of all the property and assets, real and personal, of the said American Guaranty Company of Chicago to Edwin M. Keatley. Rec. p. 136.

ORDER GRANTING LEAVE TO EDWIN M. KEATLEY TO INTERVENE SPECIALLY IN UNITED STATES CIRCUIT COURT.

On the 27th of October, 1909, the following order was entered in the United States Circuit Court, Northern District of Illinois, the Court from which this appeal is taken.

"(Title.)

Now come the parties by their solicitors, and now comes on to be heard the motion of Edwin M. Keatley, the receiver of the American Guaranty Company of Chicago, heretofore appointed by the Circuit Court of Kanawha County, West Virginia, for leave to file his intervening petition herein, and the Court after hearing the arguments of counsel and being fully advised in the premises, sustained said motion.

"It is thereupon ordered that leave be, and the same is, hereby given said receiver to file his intervening petition instanter, and leave is given

the respondents to file their respective answers instanter, and it is further ordered that the replication to said answers be filed within five days from this date."

"*And thereupon said intervening petitioner is given one week in which to file his brief upon the question of jurisdiction; the respondents to file their brief within one week thereafter, and the said intervener has three days thereafter to reply.*" Rec. p. 215.

INTERVENING PETITION OF EDWIN M. KEATLEY. Rec. pp. 128-214.

Thereupon on such date Edwin M. Keatley filed his special intervening petition therein.

That in such petition he alleges the appearance in said Circuit Court of Kanawha County of W. R. Gilliam, the filing of his petition, the substance thereof, and all proceedings thereunder to the execution of the deed by commissioner Clark to him of the property and assets of the American Guaranty Company of Chicago and the approval of such deed by the Circuit Court of Kanawha County and makes a part of such petition a certified copy of all the proceedings in the Circuit Court of Kanawha County from the commencement of such action for dissolution, and the appointment of a receiver to the making of such deed to such receiver by Commissioner Clark.

And continuing such petition alleges, on advice of counsel:

"That the judgment and decree of said Circuit Court for Kanawha County, West Virginia, dissolving and declaring at an end the incorporation of said American Guaranty Company of Chicago as a corporation * * * made and

entered on said 1st day of February, 1909, was fully authorized by the provisions of sections 57 and 58 of Chapter 53 of the Code of West Virginia and forever ended and determined the corporate existence of said defendant Company and deprived it absolutely and entirely of any power or authority to act in any manner whatsoever as a corporation thereafter, and forever ended the authority of its officers to act for or in its behalf except as expressly provided by section 59 of Chapter 53. * * * And that, as in the said case in Kanawha County Circuit Court, where a receiver of said dissolved corporation is appointed for the purpose of winding up the corporate business and affairs, the officers of said corporation are absolutely deprived of all authority to act, except as directed by the said Court, or requested by the said receiver. * * *

"That, therefore, the said dissolution of said American Guaranty Company of Chicago * * * by said decree of said Circuit Court of Kanawha county * * * and the appointment of said Black as such receiver * * * took from said corporation and its Board of Directors, and all its officers, every power, franchise, right and authority to appear for said corporation in this Honorable Court and submit to the jurisdiction thereof in this pending action, or to give to this Honorable Court jurisdiction herein, either over the person of said defendant company, or the subject-matter of winding up its affairs by and through its own receiver appointed in this cause upon said second day of February, A. D. 1909.

"That the said defendant corporation upon dissolution as hereinbefore mentioned * * *

could only finish its business, conserve and marshall its assets, pay and discharge its lawful indebtedness, and distribute and dispose of its surplus funds, if any, by and through the direction, orders, judgments and decrees of said Circuit Court * * * and that any attempt so to do, or any interference with the property, business, or assets of said defendant corporation, by any other court wherever situate, except ancillary to, and upon the request and authority of said court of original jurisdiction, would be wholly unwarranted and without competent jurisdiction, and all the acts, orders, directions, judgments and decrees of such other court, and all its proceedings, would in that respect be *coram non judice* and without right."

"And your petitioner further shows, that he is advised by counsel, and therefore alleges, that the pretended voluntary appearance in this Honorable Court and in this cause by said defendant, American Guaranty Company of Chicago, on said 2nd day of February, A. D. 1909, by and through its attorneys, Gorham & Wales, and its voluntary answer to said bill, and its consent to the appointment of receiver herein * * * gave to this Honorable Court no jurisdiction whatever, but was in fact a fraud upon this Honorable Court, and all proceedings subsequently taken herein are without right, and in truth and in law and fact, null and void.

"That by virtue of the order so made * * * appointing your petitioner receiver of said Court for the property and assets of said defendant, American Guaranty Company of Chicago, it becomes the duty of your petitioner to ask permission of this Honorable Court to intervene

specially in this action, not acknowledging, but on the contrary, protesting the jurisdiction of this Honorable Court in the premises. And to ask that this Honorable Court permit to be filed herein, this petition for the purpose aforesaid, to the end that, after a proper answer the issues framed may be heard in this Honorable Court and finally determined, and that the order and decree of this Honorable Court be made and entered, as the rules of equity shall require." Rec. pp. 133-135.

PRETENDED ANSWER OF AMERICAN GUARANTY COMPANY TO PETITION OF EDWIN M. KEATLEY.

Rec. pp. 216-226. Exhibits pp. 226-278.

That on such 27th of October, 1909, such American Guaranty Company, by Lewis W. Pitcher, Secretary, made and filed a pretended answer to such petition of Edwin M. Keatley.

Such answer was verified by Lewis W. Pitcher and Hal C. Bangs. Rec. p. 226.

That Edwin A. Potter, as receiver, and the Contract-Holders' Committee, each adopted such pretended answer of the American Guaranty Company of Chicago. Rec. p. 279.

In such answer is alleged, in substance, the plan of the executive committee, the four stockholders and their attorneys and solicitors, to procure the dissolution of such corporation, and the appointment of a statutory receiver, with limited powers, by the Circuit Court of Kanawha County, West Virginia, and the bringing of the suit in the United States Circuit Court by the same parties against the dissolved corporation, and the pretended appearance by the former

officers of the dissolved corporation, and all the proceedings had therein. Rec. pp. 217, 218, 219.

DECREE DISMISSING INTERVENING PETITION OF EDWIN M. KEATLEY.

On the 7th day of February, 1910, there was made and entered in the United States Circuit Court Northern District of Illinois the following decree:

"(Title.)

There having heretofore come on to be heard the intervening petition heretofore filed herein by Edwin M. Keatley, of Charleston, West Virginia, claiming to have been appointed receiver of said American Guaranty Company of Chicago, by the Circuit Court of Kanawha County, West Virginia, and the exhibits attached to said intervening petition; also the answers and exhibits thereto heretofore filed herein to said intervening petition by said American Guaranty Company of Chicago, by Edwin A. Potter, heretofore appointed herein receiver of said American Guaranty Company of Chicago, by A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting the Contract-Holders' Committee of said American Guaranty Company of Chicago, and by said Carrie Rebecca Furey and Caroline La Tour Furey, complainants herein; and there having heretofore also come on to be heard at the same time the motion of said intervening petitioner, orally made in open court, for an order herein to direct said Edwin A. Potter, Receiver herein, to turn over the property, assets and effects of said American Guaranty Company of Chicago, in the possession, custody and control of said Edwin A. Potter, Receiver, to said intervening petitioner,

Edwin M. Keatley; and the court having heretofore heard the respective arguments of Messrs. Thomas H. Gill, F. W. Houghton, George. B. Edgerton and Chilton, McCorkle & Chilton, solicitors and of counsel for said intervening petitioner, and of Levy Mayer, Esq., solicitor and of counsel for said Edwin A. Potter, Receiver herein, and the court having heretofore taken all of said matters under advisement and now having duly considered the same, and being fully advised in the premises, Finds: that it has jurisdiction in the premises,

"That there is no equity in said intervening petition or in said motion, and that said intervening petitioner, Edwin M. Keatley, is not entitled to any of the relief prayed for in said intervening petition or in said motion.

"Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said intervening petition and the said motion, and each of them, shall be and the same are hereby overruled and denied, and the said intervening petition is hereby ordered to be and the same is hereby dismissed." Rec. pp. 286, 287.

WRITTEN OPINION OF THE HONORABLE CHRISTIAN C. KOHLSAAT.

The written opinion of the Hon. Christian C. Kohlsaat rendered prior to the entering of such decree was made a part of and returned with the records herein. Rec. pp. 280-286.

From that opinion it clearly appears that the only question raised by the special intervening petition of Edwin M. Keatley in the United States Circuit Court was the jurisdiction of such Court as a Federal Court

over the person and property of the American Guaranty Company.

On March 5, 1910, the special intervener, Edwin M. Keatley, made and presented his petition for appeal to the Hon. Christian C. Kohlsaat, together with his assignment of errors, which petition for appeal is as follows:

PETITION FOR APPEAL.

"(Title.)

The above named Intervener, Edwin M. Keatley, conceiving himself aggrieved by the order and decree entered on the 7th day of February, A. D. 1910, in the above entitled proceeding, dismissing his intervening petition herein, based solely upon the ground that this Honorable Court has never obtained jurisdiction of the person of the defendant, American Guaranty Company of Chicago, because of the lack of service of process on said defendant, and because no proper or legal voluntary appearance by said defendant was or could be made herein, doth hereby appeal from said order and decree to the Supreme Court of the United States and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree were made, together with the written opinion of the Honorable Christian C. Kohlsaat, on such question of jurisdiction rendered but not filed herein, duly authenticated, may be sent to the Supreme Court of the United States.

March 5th, 1910." Duly signed. Rec. p. 288.

On May 6th, 1910, the said Honorable Christian C. Kohlsaat directed the Clerk of Court to file such

Petition for Appeal and such Assignment of Errors and thereupon made the following

ORDER ALLOWING SUCH APPEAL.

"(Title.)

Now comes Edwin M. Keatley, by his solicitors, and presents his petition for appeal and assignment of errors, praying an appeal to the United States Supreme Court from the order and decree entered herein on February 7th, 1910.

"This Court is of the opinion that no question of jurisdiction is involved in said order and decree, but allows said appeal without certifying to any jurisdictional question, upon the said Keatley filing an appeal bond in the sum of $500 with surety to be approved by the Court." Rec. p. 290.

And thereafter the bond on appeal was filed and approved, and the order of citation made and duly served. Rec. pp. 290-296.

In closing this lengthy statement of facts we beg this Court to consider the following:

SALIENT FACTS.

Such Guaranty Company was a *quasi* insurance corporation.

Out of the authorized 5,000 shares of capital stock only 962 had ever been issued.

Prior to the death of Furey, November 29th, 1908, he and two others had for years owned all the issued capital stock.

On February 1, 1909, the entire claimed net assets of such Guaranty Company were intangible per-

sonalty, and were of the value of only $792,864.99. That its net liabilities were probably $2,075,298.32.

Of such claimed net assets $565,891.37 constituted the Special Fund which belonged exclusively to certain of the contract holders.

The Royal Trust Company, a corporation of Illinois, held such Special Fund in trust for such contract holders.

The Code of West Virginia authorizes a suit for dissolution only by stockholders owning one-third or more of the capital stock and *who desire to wind up the affairs of the corporation sought to be dissolved.*

In the suit for dissolution, the prayer of the complainants, the prayer of the two stockholders joining, and the consent answer of the corporation, *each was*, that a decree of dissolution be made, "*and appoint one or more persons to be receivers to take charge of and administer the assets of said defendant company.*

That the main object of the suit in Federal Court was to get possession of the Special Fund.

That the reason alleged for appointment of a receiver by the Federal Court was a mere fiction.

That the two suits, the one for dissolution, and the one in Federal Court were *collusively planned.*

That Gorham & Wales, pretended solicitors for the dissolved corporation in suit in Federal Court, also sought to represent the contract holders by appearing for the Contract-Holders' Committee.

ASSIGNMENT OF ERRORS.

The United States Circuit Court of Northern Illinois erred:

1st. In taking jurisdiction of and over the person and property of the defendant American Guar-

anty Company of Chicago, after the decree of dissolution of, and appointment of a receiver for said defendant, entered pursuant to express statute by a court of competent jurisdiction in the state of defendant's domicile, such jurisdiction of the said Circuit Court of the United States, resting solely upon the pretended appearance by the attorneys for said defendant appointed as such before said dissolution, and a similar pretended voluntary appearance by the former President and Secretary of said defendant corporation.

2nd. In making and entering its order and decree herein dated February 7, 1910, denying and dismissing the petition and motion of Edwin M. Keatley as receiver of said defendant corporation, appointed by the said State Court, for right to intervene and have and receive as such officer, the property and assets of said defendant corporation now in possession of said Circuit Court of the United States.

BRIEF.

Before taking up the Assignment of Errors, which we shall do under five propositions, we suggest to this Court:

SUGGESTION.

IT WAS THE DUTY OF SAID UNITED STATES CIRCUIT COURT TO HAVE DISMISSED SUCH SUIT UPON ITS OWN MOTION UNDER THE PROVISIONS OF SECTION 5 OF THE ACT OF MARCH 3, 1875. (18 Stat. 470), and the acts amendatory thereof. U. S. Compiled Stat. 1901, page 507.

M. C. & L. M. Ry. Co. v. Swan, 111 U. S., 379, 382.

Morris v. Gilmer, 129 U. S., 315, 325.
Colorado Central Mining Co. v. Turck, 150 U. S. 138, 143.
Great Southern, etc., Co. v. Jones, 177 U. S. 449.
Dawson v. Columbian Trust Co., 197 U. S. 181.
Matter of Reisenberg, 208 U. S. 90.
Construction Co. v. Cane Creek, 155 U. S. 283.
Wilson v. Oswego Township, 151 U. S. 56.
Peper v. Fordyce, 119 U. S. 469.
Coal Co. v. Blatchford, 11 Wall. 172.
Stiles v. Laurel Fork Oil & Coal Co., 47 W. Va. 838.
Stiles v. Laurel Fork Oil & Coal Co., 45 W. Va. 374.
Hirsch v. Independent Steel Co. of Amreica, 196 Fed., Rep. 104, par. 5.

APPEAL.

The ultimate question on this appeal is:

Do the provisions of Section 59 of Chapter 53 of the Code of West Virginia, so continue the life and power of such Guaranty Company, after such dissolution and the appointment of such receiver, that its former officers and former attorneys could appear and make answer in its behalf and thus give the Federal Court jurisdiction of its person?

In answer to such question, we present the following:

I.

The receiver of the American Guaranty Company of Chicago so appointed by the Circuit Court of Kan-

awha County, West Virginia, on February 1, 1909, was and is a statutory receiver.

Sections 57, 58, 59, Chapter 53, Code of West Virginia.

Relfe v. Rundle, 103 U. S. 222.

Great Western M. & M. Co. v. Harris, 198 U. S. 561, 574, 576.

Conklin v. U. S. Shipbuilding Co., 140 Fed., Rep. 219.

Pearce v. Sutherland et al., 164 Fed., Rep. 609.

Lyon v. McKeefrey et al., 171 Fed., Rep. 384.

In re Electric Supply Co., 175 Fed., Rep. 612.

Converse v. Mears, 162 Fed., Rep. 767.

Howarth v. Lombard, 175 Mass. 570.

Runyon v. F. & M. Bank of New-Brunswick, 4 N. J. Eq., 480.

Alderson on Receivers, pp. 276, 277, 387, 523, 524.

Thompson on Corporations, 6510.

White v. White, 130 Cal. 597.

Groom v. Mortimer Land Co., 192 Fed. Rep. 849.

II.

On such appointment of such receiver by the Circuit Court of Kanawha County, the Statutes vested in such receiver the title of all the assets of such American Guaranty Company wherever situated.

Sections 57, 58, 59, Chapter 53, Code of W. Va.

Relfe v. Rundle, 103 U. S. 222.

Pendleton v. Russell, 144 U. S. 640.

Great Western M. & M. Co. v. Harris, 198 U. S. 561, 574, 576.

Groom v. Mortimer Land Co., 192 Fed., Rep. 849.

Nelson v. Hubbard, 96 Ala. 238.

Alderson on Receivers, p. 276, Sec. 225

Thompson on Corporations 2nd ed., 6373, 6602.

Kokomo, etc., R. Co. v. Pittsburgh, etc., R. Co., 25 Ind., App. 335.

Northwestern Mutual Life Ins. Co. v. Kidder, 162 Ind. 382.

Freeholders v. State Bank, 29 N. J. Eq. 268.

American Nat'l Bank of Denver v. Nat'l Benefit & Casualty Co., 79 Fed., Rep. 420.

Swing v. Bentley & Gerwig Co., 45 W. Va. 283, 285.

Grogan v. Egbert, 44 W. Va. 75.

Taylor v. Life Assn. of America, 13 Fed. Rep. 493, 496.

Kirtland v. Hotchkiss, 100 U. S. 491.

Union, etc., Transit Co. v. Kentucky, 199 U. S. 205.

Dykes v. Lockwood Mtge. Co. 2nd Kans. App. 228.

Avery v. Boston, 72 Fed. Rep. 700.

III.

By the decree of dissolution and the appointment of the receiver of such Guaranty Company on February 1, 1909, its corporate life was forever ended, and all the power of its former officers and former attorneys to act in any manner whatever in behalf of such corporation ceased, unless such life and power be continued by the provisions of Section 59 of Chapter 53, Code of West Virginia.

Mumma v. Potomac Co., 8 Pet. 281.

Selma First Natl. Bank v. Colby, 21 Wall. 609.

Pendleton v. Russell, 144 U. S. 640.

Dundee Mtge. & Trust Invest. Co. v. Hughes, 77 Fed. Rep. 855.

Nelson v. Hubbard, 96 Ala. 238.

Wilcox v. Continental Life Ins. Co., 56 Conn. 468.

Life Assn. of America v. Fassett, 102 Ill. 315.

Thornton v. Marginal Freight Ry. Co., 123 Mass. 32.

Stiles v. Laurel Fork Oil & Coal Co., 47 W. Va. 838.

State ex rel. Atty-Genl. v. Fidelity L. & T. Co., 113 Ia. 439.

IV.

The provisions of Section 59 of Chapter 53 of the Code of West Virginia do not continue the corporate existence of the American Guaranty Company of Chicago after such decree of dissolution and appointment of such receiver, so the former officers or former attorneys of such corporation, or both, could appear and answer in such suit in the United States Circuit Court and by such answer give jurisdiction to such Court of either the person or property of such Guaranty Company.

Relfe v. Rundle, 103 U. S. 222.

Pendleton v. Russell, 144 U. S. 640.

Kokomo City St. R. Co. v. Pittsburgh, etc., R. Co., 25 Ind. App. 335.

McCulloch v. Norwood, 58 N. Y. 562.

Travis v. Myers, 67 N. Y. 542.

Peck v. Crane, 25 Vt. 146.

Fitts v. Natl. Life Assn., 130 Ala. 413.

Marion Phosphate Co. v. Perry, 74 Fed. Rep. 425.

Clark v. Natl. Linseed Oil Co., 105 Fed. Rep. 787.

Cooper v. Philadelphia Worsted Co., 68 N. J. Eq. 622.

State ex rel. Atty. Genl. v. Fidelity L & T. Co., 113 Ia. 439.

American Natl. Bank of Denver v. Natl. Benefit & Casualty Co., 70 Fed. Rep. 420.

Avery v. Boston Safe Deposit & Trust Co., 72 Fed. Rep. 700.

Eau Claire Canning Co. v. Western Brokerage Co., 213 Ill. 561.

Nelson v. Hubbard, 96 Ala. 238.

Groom v. Mortimer Land Co., 192 Fed. Rep. 849.

Converse v. Mears, 162 Fed. Rep. 767.

Parsons v. Charter Oak Life Ins. Co., 31 Fed. Rep. 305.

Fry v. Charter Oak Life Ins. Co., 31 Fed. Rep. 197.

Canada Southern Ry. Co. v. Gebhard, 109 U. S. 527.

Wabash Ry. Co. v. Adelbert College, 208 U. S. 54.

White Mt. Paper Co. v. Morse Co. et al., 127 Fed. Rep. 643.

In Re White Mt. Paper Co., 127 Fed. Rep. 180.

Stiles v. Laurel Fork Oil & Coal Co., 47 W. Va. 838.

Stiles v. Laurel Fork Oil & Coal Co., 45 W. Va. 374.

Bernheimer v. Converse, 206 U. S. 516.

Southern Bldg. & Loan Assn. v. Miller, 118 Fed. Rep. 369.

Swing v. Bentley & Gerwig F. Co., 45 W. Va. 283.

Grogan v. Egbert, 44 W. Va. 75.

Austen v. Columbian Lubricants Co., 87 N. Y. S. 497.

V.

The order of the United States Circuit Court so appointing Edwin A. Potter receiver of such corporation was coram non judice void and without right, as were all subsequent orders and decrees of such court by which Edwin A. Potter, as such receiver, obtained possession of the property and assets of such dissolved corporation.

Relfe v. Rundle, 103 U. S. 222.

Pendleton v. Russell, 144 U. S. 640.

ARGUMENT.

SUGGESTION.

IT WAS THE DUTY OF SAID UNITED STATES CIRCUIT COURT TO HAVE DISMISSED SUCH SUIT UPON ITS OWN MOTION UNDER THE PROVISIONS OF SECTION 5 OF THE ACT OF MARCH 3, 1875. (18 Stat. 470), and the acts amendatory thereof.

Section 5 of such Act as amended is as follows:

"That if, in any suit commenced in a Circuit Court, or removed from a State Court to a Circuit Court of the United States, it shall appear to the satisfaction of said Circuit Court, at any time after such suit has been brought or removed thereto, that such suit does not really and

substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said Circuit Court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed as justice may require, and shall make such order as to costs as shall be just."

(a) Such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court.

THE NATURE OF THE SUIT.

In such suit two stockholders join with a creditor as plaintiffs. There is only one creditor and that is Carrie Rebecca Furey as executrix. But, as we have seen, Carrie Rebecca Furey as executrix is also the legal owner and holder of 602 shares of the capital stock of such corporation and is so a stockholder. Carrie Rebecca Furey, in her own right, and Caroline La Tour Furey are equitable owners of such stock under the will of Charles La Tour Furey, deceased.

In the same sense, these two may be said to be equitable owners of the claim against such Guaranty Company.

In paragraph 13 of such bill it is alleged:

"13. That your orators file this, their bill of complaint, not only on behalf of themselves, but also on behalf of all other stockholders of said Guaranty Company, and of all other creditors thereof who may ask and secure leave to in-

tervene herein and become parties hereto." Rec. p. 7.

So we may properly denominate such suit a stockholders' and creditors' suit.

The gist of the complaint is, the plaintiffs citizens of Illinois, ask the Court to appoint a receiver to conserve the assets of a dissolved corporation, a former citizen of West Virginia, for the reason that certain contract holders of such dissolved corporation threaten suits by attachment or otherwise against the corporate assets and that such suits will dissipate or waste such assets; and, allege a simple contract indebtedness of $14,798.42 to the executrix for the services of said Charles La Tour Furey, deceased.

One purpose of such suit seems to be *to wind up the affairs of such dissolved corporation and distribute its assets through a chancery receiver in such Federal Court.* But the *main purpose* seems to be to get into the hands of such chancery receiver the special property and assets held by the Royal Trust Company, a citizen of Illinois, in trust for the contract holders of such Guaranty Company.

In the title of such suit only one defendant is named, viz., American Guaranty Company of Chicago.

There is no attempted service of any process. But, at the same time such bill of complaint was filed, the dissolved corporation by its former officers and former attorneys filed a consent answer in which all the allegations of the bill of complaint are admitted, and they consent that a receiver may be appointed and all other necessary orders made. Rec. p. 56.

At the same instant the two other stockholders, James L. Bigelow and L. W. Pitcher, filed answer by which they admitted themselves to be the owners of the amounts of stock alleged in the complaint and

consent to the court's granting the relief prayed for in the bill of complaint and to the appointment forthwith of a receiver as therein prayed. Rec. p. 254.

OTHER STOCKHOLDERS NECESSARY PARTIES.

In a stockholders' or creditors' suit to wind up the affairs of a dissolved corporation all the stockholders are necessary parties. So held in Stiles v. Laurel Fork Oil & Coal Co., 45 W. Va. 374; and in Stiles v. Laurel Fork Oil & Coal Co., 47 W. Va. 838.

Bgelow and Pitcher are citizens of Illinois.

Bgelow and Pitcher do not join as plaintiffs, and, from their appearance and answer, they are defendants in such action.

If they are necessary defendants then there is no federal jurisdiction, because two of the defendants are citizens of the same state as the plaintiffs.

The American Guaranty Company having been dissolved the day previous by a court of competent jurisdiction in the state of its creation is a citizen of no state.

NO CONTROVERSY.

There is no controversy on the alleged necessity for the appointment of a receiver between the parties plaintiff and defendants in such suit; but appellant suggests, that is because there are two other parties who are indispensable parties to such suit even on the question of the appointment of a receiver who have been purposely omitted.

And those are the Royal Trust Company of Illinois and the contract holders.

It is alleged in paragraph 8 of such bill of com-

plaint that said Guaranty Company did deposit and now has on deposit with the Royal Trust Company of Chicago, a corporation duly organized and doing business under and by virtue of the laws of Illinois, a fund consisting of cash and other securities aggregating over $550,000.00. Rec. p. 5.

That was not denied but admitted by such pretended answer of the American Guaranty Company, and in the answer of the other two defendants, Bigelow and Pitcher. But in the Record we find a *very copy* of the contract made between such Guaranty Company and the Royal Trust Company in reference to such alleged deposit or special fund. Rec. pp. 95, 101.

Such contract contains the following provisions:

> "10. In case of the dissolution of the party of the first part (American Guaranty Company of Chicago) the entire reserve held hereunder shall be divided among the holders of the Special Contracts, in the proportion which said reserve bears to the net withdrawal value of each of said Special Contracts outstanding." Rec. p. 97.

We also find in the Record in the petition of Potter, receiver, a description of the property and assets so held by the Royal Trust Company under such contract in trust for the contract holders (Rec. pp. 64-67), which the Royal Trust Company admitted they held in trust. Rec. pp. 101, 105.

It is a *verity* that such is the property referred to in the paragraph quoted from the bill of complaint.

We see then, that the allegation is, such property is an asset of the dissolved Guaranty Company; and, that the main purpose of such suit was to get out of the possession of such Royal Trust Company and into the hands of the receiver such trust fund.

ROYAL TRUST COMPANY AN INDISPENSABLE PARTY.

Then the contention of appellant is, that the Royal Trust Company is an *indispensable party to such suit*, for, it is the *trustee* of an *active* trust. See Agreement Rec. pp. 95-98.

"The trustee of an active trust is a necessary party to a suit affecting the trust estate."

McRae v. Branch Bank of Ala., 19 How. 376;
O'Hara v. MacConnell, 93 U. S. 150;
Thayer v. Life Assn., 112 U. S. 717;
Am. B. S. v. Price, 110 U. S. 61;
Peper v. Fordyce, 119 U. S. 469.

Certainly, such suit, even if we consider simply the phase of it appointing a receiver, *affects* such trust estate, as the receiver of such estate is appointed under the claim that such trust fund is an asset of such dissolved corporation; and, the result would be, on a simple hearing before a court without a trial, to have such trust fund transferred from the possession of the trustee to the possession of the receiver.

This is not a debt due from the Royal Trust Company to the American Guaranty Company but it consists of separate and distinct property held in trust.

The receiver has reported a net balance of assets on the 3rd of February, 1909, of only $792,864.99, of this sum he has reported that property of the value of $565,891.37 was in such special fund.

So independent of the special fund belonging to this corporation and in the general fund there was only $226,993.62. Rec. p. 264.

By far the major portion in value of what was claimed to be assets of the guaranty Company, more

than twice as much as was in the general fund, was in such special fund so held by such trustee.

Therefore we say, the main purpose of such suit was to get into the hands of the chancery receiver such trust fund and that by a mere *contrivance*. If this be so, this is another reason why the Royal Trust Company was an indispensable party to such suit.

In Construction Co. v. Cane Creek, 155 U. S. 283, attempt was made to get possession of personal property in the hands of the trustee by a *contrivance*. That was

> ".A suit commenced by the Construction Company, a citizen of Massachusetts, in the United States Circuit Court for the district of South Carolina to recover the possession of certain bonds. The defendants were the township of Cane Creek, Lancaster County, South Carolina, a citizen of that state, and the Boston Safe Deposit & Trust Company, a corporation created by and a citizen of the state of Massachusetts, the state of which the plaintiff was a citizen.
>
> The facts as alleged in the bill were that $19,000.00 of the bonds of the township of Cane Creek, one of the defendants, had been by agreement deposited with the Deposit & Trust Company, the other defendant, to be delivered to the plaintiff when a certain railroad in the township was completed and ready for operation, etc.
>
> The railroad was completed and the engineer refused to sign a certificate for the delivery of the bonds. That the Trust Company has no interest in the bonds and claimed none, and was ready to deliver the bonds whenever it was protected in so doing. The prayer was, first, for process; second, that pending said suit, and un-

til further order of the court, the said Trust Company *be ordered to deliver and pay over said bonds to the complainant.*"

"The township defended by a motion to set aside the service of process, by a plea to the jurisdiction of the court, on the ground that one of the defendants was a citizen of the same State as the plaintiff, and a necessary party to the controversy, etc. The motion to set aside service and the plea were overruled, but upon the merits a decree was entered in favor of the defendants. To reverse this decree the plaintiff appealed to this court."

Held by this court:

"The plea to the jurisdiction should have been sustained. The substantial object of the suit was to obtain possession of the bonds. * * * Where the object of an action or suit is to recover the possession of real or personal property, *the one in possession* is a necessary and indispensable (and not a formal) party. The case of Wilson v. Oswego Township, 151 U. S. 56, is decisive on this point."

In the instant case the Royal Trust Company had possession of this special fund.

The Royal Trust Company held such special fund in trust for the contract holders.

Such special fund was not properly an asset of such Guaranty Company. The substantial object of such suit was to get such special fund out of the possession of the Royal Trust Company and into the possession of a chancery receiver.

The stockholders had no interest or claim on such special fund.

No creditor, other than a special contract holder, had or could have any claim on such special fund.

Such special fund was only 75% of the cash surrender value of such special contracts.

Therefore, it seems conclusively established that the Royal Trust Company and the Contract Holders were indispensable parties to such suit.

EVIDENCE OF THE PLAN.

Appreciating the importance of having the contract holders parties to this suit as well as the Royal Trust Company, effort was made with all speed to get these parties before such Federal Court.

On February 3rd a letter from the Royal Trust Company is received by receiver Potter informing him all about the special fund. Rec. p. 63.

On the 6th of February, four days after they had appeared as the solicitors of the dissolved corporation, signing such consent answer as such in the Federal Court, these same attorneys, Gorham & Wales, appeared as the attorneys for the Contract Holders' Committee. Rec. pp. 59-61.

This Contract Holders' Committee was composed of four individuals. (Rec. pp. 60, 61.) How such Committee originated, and who gave them authority to so appear does not appear of record but presumably it was a part of the *plan*.

On February 13th receiver Potter petitioned such Court to make the Royal Trust Company a party defendant and direct it to turn over such special fund to him. Rec. pp. 61-74.

On the same day voluntarily appeared the Royal Trust Company and demurred to such petition and thus became a party defendant in such suit. Rec. p. 90.

On the 19th of February and before the demurrer was heard the Royal Trust Company obtained leave to file an answer to such petition. Rec. pp. 92, 94-111.

In this answer of the Royal Trust Company is a list of the securities and other personal property on deposit with the Royal Trust Company as trustee of the reserve fund of the American Guaranty Company. Rec. pp. 101-105.

On the same 19th of February, Gorham & Wales, for the Contract Holders' Committee, filed a petition in behalf of such Committee asking the Court to direct the Royal Trust Company to turn over this trust fund to the receiver Potter. Rec. pp. 233, 91.

The attorneys for an insolvent dissolved corporation authorized to represent such dissolved corporation in the entire proceeding appeared in the same proceeding through this Contract Holders' Committee for more than 6,500 contract holders and asked that this special fund be turned over to this receiver.

Could such attorneys represent both such insolvent dissolved corporation and the contract holders whose claims aggregate more than two millions of dollars?

CONTROVERSY NOT COGNIZABLE BY FEDERAL COURT.

(b) But if it be held there is a controversy between citizens of different states in such suit and that the contract holders and the Royal Trust Company were not necessary parties and that the other stockholders were not necessary parties, we suggest further that such controversy is a controversy of which a Federal Court will not take cognizance.

A stockholders' or creditors' suit *to wind up the affairs of a corporation of West Virginia*, dissolved

under the provisions of section 57, chapter 53 Code of that state, can be brought *only* in the State Court which decreed the dissolution. So held in Stiles v. Laurel Fork Oil & Coal Co., 47 W. Va. 838.

NO GROUND FOR APPOINTMENT OF A RECEIVER.

(c) *The equity ground alleged (par. 12 Rec. p. 7), in such bill of complaint for the appointment of receiver by the Federal Court did not exist and such allegation was untrue and was known to be untrue by complainants at such time.*

The allegation is briefly,

> "That in consequence of the entry of said decree of dissolution * * * some of the holders of said contracts threaten * * * that they will commence suits by attachment or otherwise against said Guaranty Company and levy upon its said property. * * * That interminable, complicated and costly litigation will ensue and the property, assets and effects of said Guaranty Company will be wasted, etc., unless such property, assets and effects are taken possession of by a receiver to be appointed by this court, etc." Rec. p. 7.

Instantly there is forced on the mind the inquiry:

Who told those contract holders of such decree of dissolution?

They must have been told very speedily.

Why, the bill of complaint in the Federal Court was verified in Cook County, Illinois, on February 1, 1909, the same day on which the decree was entered at

Charleston, West Virginia, several hundred miles away. Rec. p. 9.

Again, why should the holders of such contracts be uneasy? An inspection of the bill of complaint in West Virginia shows the corporation was doing a large and paying business. That it had ample resources to pay all its liabilities and have a large sum left over to distribute among the stockholders.

More, 75% of the surrender cash value of the greater number of such contracts was on deposit with the Royal Trust Company of Illinois to protect such contract holders from any loss.

Indeed, in the bill in the United States Circuit Court it is alleged that the value of 602 shares of the capital stock of such corporation of the par value of $100.00 a share is worth more than $62,000.00. That in effect is an allegation of solvency.

PLAN AND COLLUSION.

It appears in the Record as alleged by the former officers of such Guaranty Company, by receiver Potter and the Contract Holders' Committee, that Hal. C. Bangs, one of the attorneys for such complainants, stated openly to the Circuit Court of Kanawha County on such 1st day of February, 1909, before the entering of the decree of dissolution, in substance:

That the parties had previously formed a plan as follows: That the two Fureys and such executrix would bring a suit for dissolution in Kanawha County Circuit Court; allege in such bill that they were stockholders owning the 602 shares of the Furey stock; that they desire to wind up the affairs of the corporation; and pray for the appointment of a receiver to take charge of and administer the assets; that the corporation would at once appear and file a

consent answer to such complaint; and, unite in such prayer that a receiver be appointed to take charge of and administer the assets of the corporation; that the other two stockholders would also appear and file a joinder; and, not only consent to such dissolution but unite in such prayer for the appointment of a receiver to take charge of and administer the assets of such corporation; that notwithstanding such prayers of complainants the corporation and the other stockholders, the attorneys would have the Court make a decree of dissolution in which it should practically amend the statute of West Virginia by limiting the power of the receiver so he could only take possession of the assets of such corporation which were within the jurisdiction of such Court; that the papers would be all previously prepared and everything done with great dispatch; that the very next day the same parties would appear in the United States Circuit Court, Northern Division of Illinois, file the bill there, as was done, and allege grounds for the appointment of a receiver in such court to conserve the assets of the corporation because they were in danger of dissipation. That they did so in conformity with such plan. Rec. p. 217.

If these things were done according to a *plan*, surely, a part of such *plan* must have been to have certain contract holders *threaten suit*.

What then becomes of the equity ground for a receivership?

The alleged ground for the appointment of a receiver to conserve the assets is without any foundation whatever, the allegation is wholly untrue and confessedly so by the very parties who made it. Hal. C. Bangs who made these statements as alleged in such answer, and as appears from the bill in West Virginia.

was one of the solicitors of the Fureys in such suit for dissolution. Rec. p. 29.

SUIT BY ATTACHMENT BY CONTRACT HOLDERS WOULD NOT LIE.

Finally, *no such suit of attachment would lie by such contract holders after a dissolution of a West Virginia corporation by a court of that state under the provisions of section 57, chapter 54.* So held in Stiles v. Laurel Fork Oil & Coal Co., 17 W. Va. 838, 846.

The American Guaranty Company was a *quasi* insurance company, somewhat on the mutual plan. At any rate the statutes of West Virginia were a part of the charter of the corporation and the contract holders were just as much bound by the charter of the corporation as were the stockholders.

There is no allegation where "Some holders of contracts who threaten suits by attachment" resided, nor of what state they were citizens. There is nothing which hints that they were citizens of the state of Illinois. Indeed, there is no allegation in either bill of complaint that any of the 6,500 contract holders were citizens of the state of Illinois.

So it can not be urged that such bill was brought to protect creditors of the state of Illinois, except the creditor Carrie Rebecca Furey as executrix, who derived her right, if any, through Charles La Tour Furey, deceased, Vice-President, a Director and the Chairman of the Board of Directors during the period when he rendered such services upon which such claim is founded.

If anyone should be barred from bringing an action to obtain a superior right to the assets it is such creditor.

But, of course, it is hardly presumable that Car-

rie Rebecca Furey, as executrix, was one of the contract holders who was threatening suits of attachment and that this suit was brought to prevent her from bringing a suit or suits which would dissipate the assets of such corporation.

(d) The allegation that Furey, executrix, is a creditor must also fail.

At the very outset Carrie Rebecca Furey as executrix, is met with this injunction which is a part of such decree of dissolution of the Circuit Court of Kanawha county, to-wit:

> "All the creditors of said American Guaranty Company are hereby enjoined from interfering or meddling with any of the property of said American Guaranty Company." Rec. p. 53.

Of course, it will be said to *conserve* the assets is not to *interfere* or *meddle* with such assets.

But we think it clearly appears that the assets were in no danger of dissipation.

Carrie Rebecca Furey, as such executrix and as an individual together with her daughter Caroline, were the very parties who invoked the jurisdiction of such Circuit Court of Kanawha county and were instrumental in obtaining such decree and such injunction which they proceeded to violate on the very next day.

SUCH CLAIM ABSOLUTELY VOID.

The reason is that when such services were performed Charles La Tour Furey was a director of such corporation.

Mr. Furey, deceased, had been a director, as appears from the bill of complaint, vice-president and chairman of the Board of Directors and general man-

ager of such corporation from January, 1903, until his death. Rec. p. 5.

The alleged contract under which the services were to be performed was made March 10, 1906. Rec. p. 3.

Section 53 of chapter 53 of Code of West Virginia provides:

> "The board of directors shall appoint such officers and agents of the corporation as they may deem proper, and prescribe their duty and compensation; but there shall be no compensation for the services rendered by the president or any director unless it be allowed by the stockholders."

We simply ask, is the allegation, "Said Guaranty Company duly entered into a contract with Charles La Tour Furey, etc." (Rec. p. 3), sufficient to show that the stockholders allowed the claim for such services after they were rendered?

In other words, ought it not to be specifically alleged, that such sum for services *was allowed* by the stockholders of the corporation?

It may be suggested that objection was not made by the stockholders who were parties to such suit when such bill was filed in the Federal Court, and *so is waived.*

But appellant suggests in reply, that at the time such bill was filed in the United States Circuit Court such corporation was insolvent. It had been dissolved in a suit brought to wind up its affairs in a court empowered for that purpose in the state of its creation and a receiver appointed under the statute of such state, which statute prescribes that such receiver should be appointed to "take charge of and administer the assets" of such corporation.

The stockholders after such dissolution could not

ratify a void contract and thus create a lien upon the assets of such insolvent dissolved corporation which assets in equity belonged to the contract holders and other creditors, if any there were.

All of these matters were within the knowledge of the United States Circuit Court.

True, no motion was made to dismiss the action on any of these various grounds.

WAS MOTION TO DISMISS NECESSARY?

In the case of Morris v. Gilmer, 129 U. S. *supra*, this Court speaking through the late Mr. Justice Harlan on page 325 said:

> "But if the record discloses a controversy of which the court can not properly take cognizance, its duty is to proceed no further and to dismiss the suit; and its failure or refusal to do what, under the law applicable to the facts proved, it ought to do, is an error which this court, upon its own motion, will correct, when the case is brought here for review. The rule is inflexible and without exception."

In M. C. & L. M. Ry. Co. v. Swan, 111 U. S. *supra*, this Court speaking through the late Mr. Justice Matthews on page 382 said:

> "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it."

To the same effect are Colorado Central Mining

Co. v. Turck, 150 U. S. 138; Great Southern, etc., Co. v. Jones, 177 U. S. 449.

I.

THE RECEIVER OF THE AMERICAN GUARANTY COMPANY OF CHICAGO SO APPOINTED BY THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA, ON FEBRUARY 1, 1909, WAS AND IS A STATUTORY RECEIVER.

Inasmuch as the appointment of the receiver by the Circuit Court in West Virginia and his qualification therefor were practically simultaneous, we shall use the term "appointment" when referring to such receiver throughout this entire brief as *including his qualification and the approval thereof by such Circuit Court.*

We adopt the following definition of statutory receivers:

> "Statutory receivers are those who are appointed in pursuance of special statutory provisions, whence they derive their powers, and to which they must look for guidance in performing their duties."
>
> Alderson on Receivers. P. 4.

Such receiver was a statutory receiver for the following reasons:

(a) *All the proceedings in Kanawha county Circuit Court resulting in the decree of dissolution and the appointment of such receiver were statutory.*

1. This was so of necessity. Since

There is no inherent power in a court of equity to dissolve a corporation.

Thompson on Corporations 2nd ed. par. 6510.

"A court of equity has, in the absence of statutory power, no jurisdiction over corporations for the purpose of decreeing their dissolution and the distribution of their assets among the individual corporators at the suit of one or more of the stockholders."

Cook on Corporations, 6th. ed. par. 629, p. 1768.

"And courts of equity will not, ordinarily, by virtue of their general equitable jurisdiction, or of their visitorial powers over corporate bodies, sequestrate the effects of the corporation, or take the management of its affairs from the hands of its own officers and intrust it to the control of a receiver of the court, upon the application, either of creditors or shareholders."

High on Receivers, 4th. ed. par. 288.

2. That such proceedings were statutory is both alleged and admitted so far as the *dissolution* is concerned. Rec. pp. 28, 218, 219, 222.

3. The bill of complaint in the suit for dissolution, taken as a whole, shows that the appointment of the receiver was under section 58 of Chapter 53 of the Code of West Virginia.

For, it is alleged in such bill:

"Your oratrices, and the said Pitcher and Bigelow, together owning all of the issued stock of said Guaranty Company, have concluded that it is to the best interests of said company, its stockholders and all of its contract holders, that said company should be dissolved and its business and affairs wound up, and its assets liquidated and distributed in accordance with the rights of those entitled thereto * * * that your or-

atrices constituting and being more than one-third in interest of the stockholders of said Guaranty Company, *desire to wind up its affairs*, and *with said Pitcher and Bigelow, who also desire to wind up its affairs*, constitute the entire interest of the stockholders of said company." Rec. pp. 27, 28.

Also the prayer is, "*And appoint one or more persons to be receivers to take charge of and administer the assets of said defendant company.*" Rec. p. 28.

Section 58 of Chapter 53 of the Code of West Virginia provides for the appointment of a receiver, "*To take charge of and administer the assets.*"

4. The joinder by Pitcher and Bigelow, their written statement, and the answer of the Guaranty Company, *joined in the prayer* "To appoint one or more persons to be receivers to take charge of and administer the assets of said defendant company." Rec. pp. 29, 30.

We find this language in the decree of dissolution and the appointment of such receiver.

"The Court finds, *that the prayer of the bill of complaint herein should be granted.*"

(b) *Such receiver was appointed in proceedings "to wind up the affairs of the corporation."*

1. One of the requisites for dissolution is that those stockholders who make the application for dissolution "*shall desire to wind up the affairs*" of the corporation. Sec. 57, Chapter 53, Code West Virginia.

2. It is alleged in such bill, "*It is to the best interests of said Company, its stockholders and all of its contract holders, that said company shall be dissolved and its business and affairs wound up, etc.*"

And, it is also alleged, "*that all the stockholders desire to wind up its affairs.*" Rec. pp. 27, 28.

The only way *to wind up the affairs* of a corporation on dissolution thereof is to gather in and then distribute its assets by paying the debts, costs of administering, and turning the balance over to the stockholders, according to their interests.

The complainants by their bill say such is their desire, and ask that such a receiver be appointed. And thereupon the Court appointed a receiver.

There can be little doubt that such receiver was appointed under the provisions of section 58.

3. The provisions of sections 58 and 59 of Chapter 53 of the Code of West Virginia invest such receiver with authority, and define his duties.

> "Sec. 58. When a corporation * * * is dissolved * * * and upon sufficient cause being shown therefor, such court, as is mentioned in the preceding section, may, on application of a creditor or stockholder, appoint one or more persons to be receivers to take charge of and administer its assets."
>
> "Sec. 59. When a corporation shall * * * be dissolved, its property and assets, shall under the order and direction of * * * the receiver or receivers appointed for the purpose by such Circuit Court as is mentioned in the fifty-seventh section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. And suits may be brought, continued or defended, the property, real or personal, of the corporation be conveyed or transferred under the common seal or other-

wise, and all lawful acts be done *in the corporate name* in like manner and with like effect as before such dissolution or expiration, but so far only as shall be necessary or proper for collecting debts, etc."

This section 59 not only prescribes what the receiver shall do with the assets and property of the corporation, but also clothes him with power to do certain necessary things in the corporate name in so winding up its affairs.

Hence, we say, such receiver so appointed was and is a statutory receiver. For, he was appointed in pursuance of special statutory provisions whence he derives his powers and to which he must look for guidance in performing his duties.

This is the doctrine of the following

AUTHORITIES.

In Relfe v. Rundle, *supra*, where Relfe, Superintendent of the Insurance Department of the state of Missouri, and by statutory provision trustee of all the assets and property of Life Association of America, a dissolved corporation of that state, was on his own motion made a party defendant in a suit pending in the fifth district court of parish of New Orleans, Louisiana, wherein Rundle (appellee) et al., were plaintiffs, and said Life Association of America, et al., were defendants. Thereupon Relfe, by proper proceedings had such cause removed to the Circuit Court of the United States for the district of Louisiana, and thereafter on motion of other parties such cause was remanded to the State court. From that order Relfe and others took such appeal. Held,

"That the statute of the state of Missouri

conferring such authority upon the superintendent of the Insurance Department of such state was in legal effect part of the charter of the corporation. He was the statutory successor of the corporation for the purpose of winding up its affairs."

In the instant dissolution suit, the West Virginia statute authorized the Kanawha County Circuit Court to *name such statutory* receiver and legal successor of the corporation.

In the case of Conklin v. United States Shipbuilding Co., *supra*, it was held:

"That section 69 of the New Jersey corporations act (P. L. P. 300) which confers upon the Chancery Court of state power to dissolve an insolvent corporation, and to declare its charter forfeited and void, does not create a right which is enforcible in a Federal Court of equity."

"The corporation is the creature of the state. It derives its life from the state. It possesses the powers conferred by the state. The period of its existence is determined solely by the will of the state, and the state has conferred upon her court of chancery *alone* the power to act as its executioner."

In Pearce v. Sutherland, et al., *supra*, it is held:

"It is well settled that, in the absence of a statute enlarging its powers, a court of equity has no jurisdiction at the suit of a shareholder or other private person to dissolve a corporation."

The same doctrine is held both in Lyon v. McKeefrey, *supra*, and in In re Electric Supply Company, *supra*.

Converse v. Mears, *supra*, holds that the statute of Minnesota conferred upon the chancery receiver of a domestic corporation the right to sue in a foreign jurisdiction in a court having jurisdiction of the parties and subject matter.

In Howarth v. Lombard, *supra*, it is held, That the statutes of the state of Washington and its constitution are a part of the charter of a corporation of that state, and, hence, a statutory receiver of such bank duly appointed and authorized in such state may bring an action against a shareholder resident of the state of Massachusetts to recover the amount of an assessment laid by the superior court of Washington upon the defendant as such shareholder.

In White v. White, *supra*, the Supreme Court of the state of California held:

> "Where the court exercises purely statutory jurisdiction, in the appointment of a receiver, its proceedings must be within the provisions of the statute. Any action of the court beyond the provisions would be without jurisdiction."

In Groom v. Mortimer Land Co., *supra*, "the defendant, a New Jersey corporation, had been voluntarily dissolved pursuant to the laws of that state. The corporate existence, after dissolution is by the New Jersey statute preserved for the purpose of winding up the affairs of the corporation with limited powers to that end. The New Jersey dissolution statute also makes the directors of the corporation at the time of dissolution its trustees in liquidation, but provides that any creditor or stockholder may apply to its chancery court for the appointment of a receiver to accomplish liquidation in lieu of the trustees."

"In such case the trustees themselves applied to the chancery court for such receiver and to be relieved

of that duty themselves, and that court upon their application appointed a receiver to take possession of the assets of the corporation, sell them, and apply the proceeds to the payment of the debts of the corporation and then to its stockholders. The assets consisted of lands in Texas exclusively. By order of the chancery court the corporation and its liquidating trustees conveyed these lands to the receiver." Held:

> "That the New Jersey court had jurisdiction of the Texas assets of the defendant corporation for the purpose of administration as against the plaintiff who was a stockholder and consented to such dissolution."

II.

ON SUCH APPOINTMENT OF SUCH RECEIVER BY THE CIRCUIT COURT OF KANAWHA COUNTY, THE STATUTES VESTED IN SUCH RECEIVER THE TITLE OF ALL THE ASSETS OF SUCH AMERICAN GUARANTY COMPANY WHEREVER SITUATED.

The appellant affirms such proposition for the following reasons:

(a) *All the property and assets of such Guaranty Company at the time of such appointment were within the jurisdiction of such Circuit Court of Kanawha county.* For,

1. All the property and assets of such Guaranty Company were *personalty.* Rec. pp. 26, 142, 263, 264.

2. All the stockholders of said Guaranty Company (two of whom were Secretary and Treasurer respectively), and the said Guaranty Company, were parties to such dissolution suit. Rec. pp. 23-28.

3. All the parties to such suit desired "to wind up the affairs" of such corporation and prayed for the

appointment of a receiver," to take charge of and administer the assets" of such Guaranty Company. Rec. pp. 28-30.

4. Such Code of West Virginia being a part of the charter of said Guaranty Company gave such Cirsuit Court of Kanawha county jurisdiction over all its assets wherever situate.

In Taylor v. Life Assn. of America, *supra*, where certain policy holders residing in Tennessee claiming a return of premiums for policies not matured by death or otherwise, by proceedings in the State court sought to attach the assets consisting of debts due to an insolvent Life Insurance Co. of Missouri and to wind it up and distribute the assets in Tennessee according to the law of that state. The corporation and its receiver, who was made a party, answered setting up that the corporation was already being administered in insolvency by the State court of Missouri, the state of its creation. And that a receiver had been there appointed who was proceeding to wind up, according to law, and the rights of the parties. That under a decree of the court the corporation had made to him a deed of assignment conveying all its assets wherever situated; and such receiver was in the possession of the notes of debtors residing in Tennessee attached to this bill. Held (quoting the language of the court on page 496),

> "In Kirtland v. Hotchkiss, 100 U. S. 491, it is said the situs of a debt is for the purposes of taxation, *if not for all purposes*, the domicile of the creditor. Where the transaction is *inter viros*, the better rule seems to be that the situs of a debt is the domicile of the creditor, and this is with us the rule, even in the administration of the decedent's estate, where the principle is of more doubtful application. If so, this property was

situated in Missouri, and not in Tennessee, and passed by the assignment or decree, or both."

Kirtland v. Hotchkiss, *supra*, was a case which arose in the state of Connecticut and raised the question of the right of the state of Connecticut to tax Kirtland on certain bonds executed in Chicago and made payable to him in that city. And the late Mr. Justice Harlan, speaking for this court on page 498 referring to the bonds said:

> "That debt, although a species of intangible property, may, for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains. Nor is the debt, for the purposes of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois."

To the same effect is the case of Union, etc., Transit Co. v. Kentucky, 199 U. S. 205.

In Dykes v. Lockwood Mtge. Co., *supra*, Held: "That the situs of a debt due a corporation is in the state creating the same."

Railway Co. v. Sturm, 174 U. S. 710, was a case "where Sturm sued the railway company in a justice court in Kansas for wages due, and recovered for the full amount claimed. The company appealed to the County District Court. When the case was called for trial, the company moved for a continuance on the ground that a creditor of Sturm had sued him in

a court in Iowa, of which state the railway company was also a corporation, and had garnisheed the company there for the wages sought to be recovered in the Kansas suit, and had recovered a judgment there from which an appeal had been taken, which was still pending. The motion for continuance was denied, the case proceeded to trial, and judgment was rendered for Sturm for the amount sued for with costs. A new trial was moved for, on the ground, among others, that the decision was contrary to and in conflict with section 1, article 4, of the constitution of the United States. The motion was denied and the judgment was sustained by the Court of Appeals and by the Supreme Court of the state. The case was then brought to the United States Supreme Court. Held, that the Iowa court had jurisdiction, and that the Kansas courts did not give to the proceedings in Iowa the faith and the credit they had in Iowa and were consequently entitled to in Kansas, and the judgment was reversed." In the course of the discussion in that case, Mr. Justice McKenna, speaking for the court on page 714 said:

> "The primary proposition is that the situs of a debt is at the domicile of a creditor, or, to state it negatively, it is not at the domicile of the debtor.
>
> "The proposition is supported by some cases; it is opposed by others. Its error proceeds, as we conceive, from confounding debt and credit, rights and remedies. The right of a creditor and the obligation of a debtor are correlative but different things, and the law in adapting its remedies for or against either must regard that difference. Of this there are many illustrations, and a proper and accurate attention to it avoids misunderstanding. This court said by Mr. Justice Gray

> in Wyman v. Halstead, 109 U. S. 654, 656: 'The general rule of law is well settled, that for the purpose of founding administration all simple contract debts are assets at the domicile of the debtor.' And this is not because of defective title in the creditor or in his administrator, but because the policy of the State of the debtor requires it to protect home creditors. Debts cannot be assets at the domicile of the debtor if their locality is fixed at the domicile of the creditor, and if the policy of the State of the debtor can protect home creditors through administration proceedings, the same policy can protect home creditors through attachment proceedings."

It seems to appellant that this simply confirms his contention here, the statute of West Virginia, a part of the charter of such Guaranty Company conferred upon the Circuit Court at the place where the principal office of such Guaranty Company was situated, the power to dissolve such corporation and wind up its affairs by the appointment of a statutory receiver, to take charge of and administer its assets.

Certainly, with the assets all personalty and the stockholders and officers of the corporation parties to the suit, the *situs* of such personal property was within the forum, or at least the jurisdiction of the court extended to such assets wherever the legal situs was.

In Stiles v. Laurel Fork Oil & Coal Company, 47 W. Va. 838, 846, which was a case in point, the Supreme Court of that state held:

> "That it was error to issue and decree upon the attachment in this case, which was levied upon the lands of the corporation, because it had long before the attachment become dissolved by the expiration of its charter, and its assets were

therefore distributable for the equal payment of all creditors, under section 59, chapter 53 Code, which makes the property of an expired or dissolved corporation assets for payment of its liabilities first, and the surplus for distribution among the stockholders according to their interests, and consequently no creditor can defeat the design of said statute, of equality among creditors, by the levy of an attachment."

(b) *Such receiver derived his authority not from the Court appointing him but from the statutes.*

This, of course, is necessarily so if such receiver was a statutory receiver. For,

"When receivers over corporations are appointed under a statute which regulates their functions and prescribes their powers and duties, it is held that they derive their powers wholly from the statute under which they are appointed, and have no authority other than such as is thus conferred. But to warrant them in the exercise of a power, it need not be expressly conferred, and if it can be fairly implied, either from the general scope and purpose of the statute, or as an incident to a power expressly given, there is sufficient warrant for its exercise."

High on Receivers, 4th ed. par 322, Citing Runyon Farmers & Mechanics Bank v. New Brunswick, 4 N. J. Eq. 480.

1. *The very purpose of the West Virginia statutes seems to be to make such receiver so appointed on dissolution the legal successor of the corporation itself.*

Now, as we have seen the object and purpose of the suit in West Virginia was two-fold, viz., a *dis-*

solution of the corporation, and, *the winding up of its affairs.*

The Code of West Virginia provided for both. So, the corporation having been dissolved, two methods of administering and distributing its property and assets were provided by the laws of West Virginia, viz., either, First, under the direction of the Board of Directors then in office; or, Second, by a statutory receiver.

Section 59 of Chapter 53 of the Code of West Virginia provides for the first method.

Sections 58 and 59 of such Code provide for the second method.

FIRST METHOD.

> "Sec. 59. When a corporation shall * * * be dissolved, its property and assets, shall, under the order and direction of the Board of Directors then in office * * * be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests."

And then by the same section the Board of Directors are authorized to do certain things in the corporate name.

SECOND METHOD.

Section 58 provides for and authorizes the appointment of a statutory receiver to take charge of and administer the assets of the corporation.

> "Sec. 59. When a corporation shall be dissolved, its property and assets, shall, under the order and direction * * * of the receiver * * * appointed for the purpose by such Circuit Court as is mentioned in the fifty-seventh section of this chapter, be subject to the payment, etc.," and then such receiver is authorized to do certain things in the corporate name to that end.

Necessarily, but one of these methods could be adopted. They are alternative, not concurrent.

If the Board of Directors assume control by virtue of the statutory provision quoted, they become statutory trustees, subject always, of course, to the strict liabilities which attach to such a trust.

They preferred not to act. At least the complainants and the corporation acted, as it only could, by and through this Board of Directors, prayed the appointment of a statutory receiver to wind up its affairs.

Consequently the power to use the corporate name granted by section 59 of the statutes must be absolutely confined to the *election* of the receiver as to when and under what circumstances the same should be exercised.

It follows conclusively that the Board of Directors, by their own request, had been deprived of every authority to further act in any way for the corporation, or under the provisions of said section 59. Upon their prayer, the Court had assumed entire control of the affairs, the property and the assets of the corporation, and had named a receiver as directed by the statute, though then apparently limiting the scope of the receiver's jurisdiction and authority to take assets within the jurisdiction of the court.

The Court of West Virginia, however, had pri-

mary jurisdiction of all the stockholders of the corporation, who had voluntarily appeared therein, as well as of the defendant, likewise appearing. And alone had power and jurisdiction to dissolve the corporation and cause the corporate affairs to be wound up, by naming a receiver to take charge of and administer its assets.

We feel confident then, in the proposition that the West Virginia court, acting at the instance of all the stockholders, who were also directors, and of the corporation itself through its officers, who were likewise directors, adopted the course provided by law for the selection of a receiver in exclusion of any other method of administration of the affairs of such corporation. And that by so doing thereby entirely deprived the Board of Directors of the corporation of any power to act in relation to the affairs of the defendant under the laws of the state.

According to the doctrine of Relfe v. Rundle, *supra*, the receiver of a corporation appointed in accordance with the provisions of its charter on dissolution, becomes the legal successor of the corporation, and is the corporation itself for all the purposes of winding up its affairs.

By the doctrine of that case all the pertinent laws of the state become part of the charter of every corporation formed under those laws and enter into every contract made. The charter thus founded goes with the corporation wherever it transacts business.

The only distinction between the instant case and the Relfe-Rundle case is, that in the Relfe-Rundle case the statute named the successor of the corporation, while in the instant case the statute authorizes the court decreeing dissolution to name the successor of the corporation.

LIMITATION OF THE AUTHORITY OF THE RECEIVER.

As we have seen all the property and assets of such Guaranty Company as well as the property and assets in such special fund were intangible chattels and choses in action, such as bonds, notes, bills of exchange, accounts, debts of various sort, certificates of stock and certificates of deposit, mortgages, etc.

Appellant has contended and still contends that the legal situs of such intangible chattels and choses in action is at the domicile of such Guaranty Company.

True, the material evidence of the right, the paper on which the promise to pay is written may have actual locality, it may occupy space, may be actually located in the city of Chicago in the office of the Guaranty Company. But this is merely the evidence of the right, the value of which lies in the fact that it will suffice to entitle the owner to the valuable property it represents. The value of the property itself lies in the right of the Guaranty Company to enforce the obligations of the several debtors to pay the several debts evidenced by these various written instruments.

In other words, the chose in action is the right of the creditor to be paid, while the debt is the obligation of the debtor to pay.

The chose in action or right of the creditor is a personal right which adheres to him wherever his situs may be. The situs of the creditor's right follows the creditor, the situs of the debtor's obligation follows the debtor. So we say the situs of the Guaranty Company's right to enforce these various choses in action evidenced by such various written statements, is at the domicile of such Guaranty Company, and so have contended that all of such assets and property

were within the jurisdiction of such Circuit Court of Kanawha County, West Virginia.

But if it be held to the contrary and that such limitation of the powers of the receiver prescribed by statute prevents such receiver from enforcing any of such rights of such corporation as are evidenced by such bonds, notes, bills of exchange, accounts, certificates of stock, mortgages, etc., which are located at Chicago then appellant contends,

2. *The Circuit Court of Kanawha County, West Virginia, had no authority to limit the powers of such receiver conferred by statute.* For

Any authority in a court to amend or change the force of a statute must be found in the statute itself and not elsewhere.

And the provision in section 57: "May make such orders and decrees and award such injunctions in the case as justice and equity may require," can not be held to confer such a power.

One might as well hold that such provision in section 57 gives the court authority to make a limited dissolution of the corporation as to hold that such provision in sections 57 or 58 gives the court power or authority to limit the powers of the receiver conferred on him by statute.

While it may be assumed that the parties being present in court consented to such limitation of the power of such receiver it will be remembered that such parties in court had no real interest in the assets of such corporation.

The corporation was hopelessly insolvent; its liabilities were more than two million dollars; its claimed assets were only about eight hundred thousand dollars. Nothing by any possibility could come on final distribution to the hands of the stockholders.

The creditors who had the real interest were

neither parties to the suit nor were they notified thereof.

Presumably the statute was passed for the benefit of both the stockholders and the creditors. Taking this view it is hard to see how even though the stockholders consented, which we contend they did not (the allegations and prayers contradict the theory), yet, the creditors have the right to insist that such a receiver and such a receiver only shall be appointed as the statute provides.

To this last proposition we cite

The Opinion of the Hon. J. C. Burdett, the Circuit Judge of Kanawha County who made the decree of February 1, 1909, dissolving such corporation and appointing such receiver, Black, and who subsequently and on the 22nd day of September, 1909, discharged receiver Black and named receiver Keatley as his successor.

A certified copy of such opinion will be, with the permission of this Court, filed herein simply as an authority on this proposition. Beginning on page 6 of such Opinion, Judge Burdett says:

> "What is a statutory receiver in the sense that it is used in the case of Relfe v. Rundle, 103 U. S., and Bernheimer v. Converse, 206 U. S.? It is one whose powers and duties are fixed by statute. His appointment, or the manner of his appointment, does not affect the question. If the statutes of the State creating the corporation prescribe the manner of winding it up and in case of dissolution commit the entire assets and property of the corporation to a receiver, commissioner or assignee to be named in a particular way, then when that receiver, commissioner or assignee shall be named in that particular way the title and powers named by that

statute at once vests. That is the case with the West Virginia statute. A receiver is provided for, his duties are provided for and among those duties is that of taking charge of and administering the assets and property of the corporation, and, therefore, I can see no doubt that the principles laid down in the two cases referred to in the Supreme Court of the United States apply here.

"This corporation need not have gone into any court to administer its affairs. There is a provision in the West Virginia statutes for the voluntary dissolution of a corporation. Section 56 of Chapter 53 provides that the stockholders may in meeting pass a resolution voluntarily dissolving the corporation, and they can then set aside sufficient assets to pay all debts of the corporation and they can assign their property to a trustee or an assignee and keep the whole matter in their own hands or in the hands of those selected by them, so long as they preserve their assets to pay all debts of the corporation and to a fair distribution of the surplus among the stockholders.

"But when they go into the Court mentioned in Section 57 and have the corporation dissolved, then the provisions of sections 58 and 59 apply and the receiver so appointed is a receiver whose powers and duties are fixed by statute. Certainly, in so far as having the right to the title and possession of all of the property of the corporation so that the Court mentioned in section 57 may administer the property as a whole, and that one Court can do justice among all of the parties in interest.

"Therefore, when my attention was called to

the fact that I had in the order entered in this cause on the first day of February, 1909, limited the jurisdiction of my Receiver to property in this State I was impressed, and so stated at the time, with the wrong which I had done to creditors and contract holders, and was impressed with my duty to correct that mistake at the earliest possible moment. In my judgment, I had no right to so limit the jurisdiction and powers of the Receiver, and the bare appointment of the Receiver under the statute carried with it the power to take the assets and property of the defendant, wherever found, and in my judgment my so limiting the powers of the Receiver was not only an error but was void, because his powers come from the statute and not from the order of the Court. Practically the only power that the Court has in such a case as this is to decree a dissolution and to appoint a Receiver, and then to determine any questions affecting the rights of stockholders and creditors. The law fixes the powers and duties of the Receiver and vests in him, when appointed, all of the property and assets of the defendant corporation."

Mr. Alderson says:

"In a proceeding seeking the appointment of a receiver founded on statute, which provides for receivers in cases not within the inherent power of courts of equity, the statute will be strictly construed, and the allegation and proofs must clearly bring the proceeding within the legislative enactment, and the power by it expressly conferred, or necessary to the effective exercise of such power. The statutory provi-

sions must be strictly followed, they being in derogation of the common law."

Alderson on Receiver, p. 79, citing: Lewis, in re 52 Kan. 660; Vanderbilt v. Central Railroad of New Jersey, 43 N. J. Eq. 669; Chamberlain v. Rochester Seamless Paper Vessel Co., 7 Hun. 557; Von Glahn v. Derosset, 81 N. C. 467; Mercantile Trust Co. v. Aetna Iron Works, 4 Ohio Cir. Ct. 579; Thompson v. Greeley, 107 No. 577; In re Lennox, Corporation, 68 N. Y. S., 103, 57 App. Div. 312.

And again on pages 19 and 20 the same author says:

"Where the court exercises purely statutory jurisdiction, its proceedings must be within the provisions of the statute. Any action of the court beyond the provisions would be without jurisdiction." Citing White v. White, 130 Cal. 597.

We submit then that the laws of West Virginia providing the method and effect of the dissolution, and the power of the receiver under such facts were therefore part of defendant's charter, and the receiver appointed upon dissolution therefor, so appointed by virtue of the corporate charter, succeeded in everything and became in legal effect everywhere the sole successor of such corporation; hence, when the Court named the receiver the provisions of sections 58 and 59 of Chapter 53 of the laws of West Virginia vested in such receiver the title to the property and estate of such corporation wherever situated. And the attempt of such Circuit Court to curtail or limit the jurisdiction of such receiver was without authority, void and of no effect.

Nelson v. Hubbard, *supra*, is an Alabama case. It is directly in point. The Alabama statute provides for the dissolution of a corporation, by an action brought by a majority of the stockholders owning three-fourths of the capital stock, and the appointment of a receiver to wind up its affairs.

There is also a continuing statute in Alabama as follows:

> "All corporations whose powers expire by limitation, all which are dissolved by forfeiture or any other cause, exist as bodies corporate for the term of five years after such dissolution, for the purpose of prosecuting or defending suits, settling their business, disposing of their property, and dividing their capital stock, but not for the purpose of continuing their business.
>
> "A majority of the stockholders, owning more than three-fourths of the stock, in the domestic corporation known as Adam's Cotton Mills, filed their petition on the equity side of the city court of Montgomery for the dissolution of that corporation, under the statute of the state."

A single stockholder, who did not join in the petition was the only defendant thereto.

On the 5th day of January, 1892, a decree was made dissolving the corporation. On the 8th day of January, 1892, W. B. Tanner who had been nominated by a majority of the stockholders was appointed receiver; but, it appearing to the court that said Tanner had a lease on the property of the dissolved corporation, it was provided in the decree appointing him receiver that he should not act as receiver until he should file in the court an instrument in writing, surrendering all rights as such lessee. On the 13th of January, 1892, eight days after the date of the

decree dissolving the corporation, the trustees in a mortgage or deed of trust alleged to have been made by the corporation on the 1st day of May, 1889, filed their independent original bill of complaint on the equity side of the same court for the execution of the trusts of that instrument and for its foreclosure. The corporation itself and its stockholders were named as parties defendant to this bill. The petitioners in the dissolution proceeding and the same persons as defendants to the original bill filed by the trustees made a motion in each of those causes to dismiss the bill filed by the trustees as an independent bill of complaint, that said bill of complaint be treated as a claim filed in the dissolution proceeding, and that an order be made that the receiver, when appointed in the dissolution proceedings should examine into the claim and contest the same if he should see proper to do so. These motions were overruled, and the trustees were permitted to proceed with their suit as an independent cause. Such action of the court was assigned as error and that was the question before the Supreme Court.

On page 246 of such decision, referring to the statute continuing the existence of the corporations after dissolution, Mr. Justice Walker speaking for the court said:

> "Could this provision have been intended to apply to the case of a corporation which has been dissolved under a law which clearly provides for the accomplishment of all the purposes mentioned by an agency other than the corporation itself? That is the case of a corporation which is dissolved at the instance of a majority of its stockholders, pursuant to the provisions of the preceding sections of the same chapter of the Code. To the receiver, who must be appointed in such

case when the dissolution is decreed, are intrusted the duties and powers of prosecuting suits or claims in favor of the corporation, of collecting claims against it, of settling its business, of disposing of its property and of dividing its capital stock. * * * The provisions for the accomplishment of all these purposes by the receiver acting under the order of the court in a dissolution proceeding, involved the withdrawal from the corporation itself of the right to do the same thing. The performance by the corporation, after the decree of dissolution, of the functions mentioned in section 1690 (such continuing statute), can not be reconciled with the exercise by a receiver appointed under the preceding sections of the powers plainly conferred upon him. The several sections are, if possible, to be so construed as not to conflict in their provisions. There is a field for the operation of section 1690 in all cases where the law does not specially provide for the termination of the right of a corporation to continue business under its charter, having the effect of devolving upon some other agency the power and duty of prosecuting and defending claims in favor of and against it, and of winding up its affairs in other respects. But that general provision does not apply when all the purposes of its enactment, as expressed upon its face, are specially provided for otherwise. The conclusion is, that a corporation which has been dissolved under the preceding sections no longer exists for the purposes mentioned in the latter section. It can no longer sue or be sued, as its powers in this regard have been surrendered, and must be conferred upon another."

(On pages 242 and 243 of such case are found the Alabama statutes providing for the dissolution of a corporation of that state and the appointment of a receiver.)

The one providing for the appointment of a receiver is as follows:

> "Receiver appointed; his duties. Upon decree of dissolution, the chancellor shall appoint a receiver of all the property and assets of the corporation. The chancellor shall direct the receiver to collect, by suit or otherwise, all the debts due the corporation, and sell property, real or personal, belonging to the corporation, and how he shall make the title thereto to the purchaser; the chancellor may, in his discretion, authorize the receiver to proceed, without suit, to sell any or all of the debts and assets of the corporation at public sale for cash, or on such terms as in his judgment the interest of the parties may require."

The American Natl. Bank of Denver v. Natl. Benefit & Casualty Co. et al., *supra*, is also a direct authority sustaining the contention of appellant. We quote just a few lines from the opinion:

> "The Natl. Benefit & Casualty Co., respondent in this suit, prior to June 27 last, was a corporation of the state of Wisconsin. On that day a court of the state of Wisconsin in a proceeding instituted by the Attorney-General of that state, decreed its dissolution, and appointed George N. Wiswell receiver of its property and effects. This action of the Wisconsin court was in pursuance to a statute of that state which conferred upon the court full power and authority in that behalf. Sanb. & B. Ann. St. Wis. pars. 1968, 2787, 3241-

3247. For causes specified in the statute the court is empowered 'to decree a dissolution of such corporation and to distribution of its effects,' 'and thereupon the affairs of such corporation shall be wound up and by and under the direction of a receiver, to be appointed by the court, and its property sold and converted into money.' Under this statute the effect of a judgment of dissolution and the appointment of a receiver, with reference to the property of the corporation, is not expressly declared in the statute, but it is plain that all such property is thereby transferred to the receiver, wherever it may be situated."

The case of Avery v. Boston Safe Deposit & Trust Co., *supra*, was a case where the defendant, a New York corporation, had been dissolved by statutory proceedings in the courts of that state and a receiver appointed, pursuant to the statutes, of the assets of such corporation. Held, *"that such receiver could bring suit in a federal court sitting in the state of Massachusetts to collect upon the rights of action belonging to such corporation for the reason that such receiver was the legal successor of such corporation."*

Swing v. Bentley & Gerwig F. Co., 45 W. Va. 283 was an action in assumpsit by James B. Swing, trustee of the creditors and stockholders of the Union Mutual Fire Insurance Co. of Cincinnati, Ohio, a corporation of that state, brought in the Circuit Court of Wood county, West Virginia, to recover on a note. The defendant demurred to the plaintiff's declaration which was sustained by the Circuit Court. And plaintiff not wishing to amend the case was dismissed and thereupon plaintiff took the same to the Supreme

Court of the state of West Virginia on a writ of error.

The demurrer was on two grounds:

First: Because the plaintiff, being the legally appointed receiver or trustee of a foreign corporation, could not sue in the courts of West Virginia, but was confined to the state of his appointment.

Second: The declaration did not show sufficient cause of action.

Referring to the first of these grounds of demurrer the Court held:

> "The law is now settled by an irresistible preponderance of authority that a receiver, trustee, or assignee of a foreign corporation, with general powers over the property of such corporation, has the right, by virtue of the comity existing between the various states of this union, to sue for any debt, claim or property owing to or belonging to such corporation. *Such receiver, trustee or assignee, being clothed with full powers of such corporation, and the right to exercise them in so far as is necessary to wind up its affairs, is the sole legal representative thereof with full authority to reduce to possession the corporate property wherever found. This principle is admitted as settled law in the case of Grogan v. Egbert, 44 W. Va. 75.*"

III.

BY THE DECREE OF DISSOLUTION AND THE APPOINTMENT OF THE RECEIVER OF SUCH GUARANTY COMPANY ON FEBRUARY 1, 1909, ITS CORPORATE LIFE WAS FOREVER ENDED AND ALL THE POWER OF ITS FORMER OFFICERS AND FORMER ATTORNEYS TO ACT IN ANY MANNER WHATEVER IN BEHALF OF SUCH CORPORATION CEASED UNLESS SUCH LIFE AND POWER BE CONTINUED BY THE PROVISIONS OF

SECTION 59 OF CHAPTER 53 OF THE CODE OF WEST VIRGINIA.

In Selma First Natl. Bank v. Colby, 21 Wall. 609, the late Mr. Justice Field speaking for the court on page 615 said:

> "With the forfeiture of its rights, privileges, and franchises the corporation was necessarily dissolved, as the decree adjudged. Its existence as a legal entity was thereupon ended; it was then a defunct institution, and judgment could no more be rendered against it in a suit previously commenced than judgment could be rendered against a dead man dying *pendente lite*. This is the rule with respect to all corporations whose chartered existence has come to an end, either by lapse of time or decree of forfeiture, unless, by statute, pending suits be allowed to proceed to judgment notwithstanding such dissolution. The prolongation of the corporate life for this specific purpose as much requires special legislative enactment as does the original creation of the corporation."

The doctrine of all the cases cited is to the same effect no matter whether the dissolution is by decree of a court under statutory provisions as in the instant case or otherwise.

A judgment against a life insurance company organized under the laws of a state was rendered by a federal circuit court in another state and was appealed to the Federal Supreme Court. Pending this appeal the insurance company was dissolved by the court of the state of its creation, and a receiver appointed by such state court. Afterwards the judgment so appealed from was reversed and the cause

remanded by the United States Supreme Court and a default judgment then taken in the federal circuit court. The judgment creditor filed claim therefor in the receivership case in the state court, and it was eventually confirmed and allowed by the highest state court, and thence again appealed to the Federal Supreme Court where the State Court was reversed and the default judgment of the Federal Circuit Court taken after the state receiver was appointed, was set aside and annulled.

In that case this Court said:

> "It (the corporation), had been dissolved and its franchises, rights and privileges declared forfeited by a decree of the Supreme Court of New York, in a proceeding brought by the Attorney-General of the State, in the name of the people, and a receiver appointed of the effects of the corporation. The judgment was therefore no more valid against a non-exist'ng corporation than it would have been if rendered for a like amount against a dead man. * * * The corporation having expired the suit itself had abated."
>
> Pendleton v. Russell, 144 U. S. 640, 645.

In the case last cited such receiver was a chancery receiver and not a statutory receiver.

IV.

THE PROVISIONS OF SECTION 59 OF CHAPTER 53 OF THE CODE OF WEST VIRGINIA DO NOT CONTINUE THE CORPORATE EXISTENCE OF THE AMERICAN GUARANTY COMPANY OF CHICAGO AFTER SUCH DECREE OF DISSOLUTION AND APPOINTMENT OF SUCH RECEIVER, SO THE FORMER OFFICERS OR FORMER ATTORNEYS OF SUCH COR-

PORATION, OR BOTH, COULD APPEAR, AND ANSWER IN SUCH SUIT IN THE UNITED STATES CIRCUIT COURT AND BY SUCH ANSWER GIVE JURISDICTION TO SUCH CIRCUIT COURT OF EITHER THE PERSON OR PROPERTY OF SUCH GUARANTY COMPANY.

(a) After the decree of dissolution and the appointment of such receiver by the Circuit Court of Kanawha county on February 1, 1909, the Guaranty Company was without power or ability to do any independent act either by its former attorneys or former officers within the state of West Virginia. Can there be any doubt about this?

Swing v. Bentley & Gerwig F. Co., 45 W. Va. 283, 285, answers such question, for in that case it was held:

> "Such receiver, or trustee, or assignee being clothed with the full powers of such corporation and the right to exercise them in so far as is necessary to wind up its affairs, is the sole legal representative thereof, with full authority to reduce to possession the corporate property wherever found."

We do not overlook, but instead rely upon the last provision of Section 59 of West Virginia Code above quoted to sustain the foregoing proposition. Such proposition must relate to the power actually exercised by either the Board of Directors or the receiver in winding up the affairs of the corporation.

If the Board of Directors assumes control for such purposes, they have all the powers of the corporation to act in necessary trapsactions to conserve and administer the assets for the payment of liabilities, and for distribution of surplus, if any. This applies only under the order of the Court passing the decree of dissolution and in lieu of the receivership.

On the other hand where the decree appoints the receiver, as provided by law, then only to such receiver or receivers, as the case may be, is the exercise of the authority granted by the statute above quoted committed.

It would be absurd, we think, to argue that the receivership applied to West Virginia alone, while elsewhere the authority thus conferred by statute might be exercised by the corporation itself or its directors or any appointed agent, and so, too, without permission of the court of primary jurisdiction.

It can not be that the corporation can voluntarily submit to the jurisdiction of the proper court of the state of its domicile, certainly under the law the only court with power and authority to enter a decree of dissolution, procure there the complete forfeiture of all its corporate rights and powers, and the appointment of a receiver, and then ignoring the very object and purpose of the suit for dissolution, viz., the dissolution of such corporation and the winding up the affairs of the corporation by the appointment of a receiver authorized by such statute, appear in a Federal Court in a distant state as a living entity and through its last officers give jurisdiction for the appointment of another receiver to wind up the affairs of this same corporation.

Can the corporation be shorn of its corporate entity in the state of its creation and still retain that entity elsewhere? If the powers of a corporation and its authority in the state of West Virginia have passed to its receiver there, may it be said that such corporation has still its entity elsewhere?

When a corporation created by the law of West Virginia is dissolved there, it no longer exists anywhere else. It came into being in West Virginia by virtue of the laws of West Virginia, and if it is dis-

solved in that state and no longer exists in West Virginia certainly it has no existence elsewhere. For,

> "A foreign state which should recognize as a legal person what was not so recognized in its own state, would be treating as valid legal facts directed to ends that are either legally or actually impossible—a result at variance with general logical principles."

The State Court assumed, at the request of the proper parties, primary jurisdiction of the affairs of the defendant company, and has not yielded or been deprived of such jurisdiction.

If the defendant had not in its own suit substantially been absolutely dissolved in the state of its creation, it might with far more reason be contended that it still had power to appear, to sue and be sued, in another jurisdiction.

But being legally dead with its succession vested in all respects in the receiver appointed no statute and no principle of law can be found, we believe, which will authorize or validate the action of such corporation in another jurisdiction.

It seems too plain for argument that the foregoing provision of section 59 is made in the case of dissolution and the appointment of a receiver *only* for the assistance of such receiver and can only be called into action when so directed by such receiver through the assistance of the court of primary jurisdiction. Otherwise we would be confronted with the absurdity of the exercise of two inconsistent rights, one by the receiver appointed to wind up the affairs of such corporation, and, the other, by a Board of Directors which the statute clothed with authority to wind up the affairs only when a receiver had not been appointed.

Could the Board of Directors act in the state of West Virginia at the same time that receiver Keatley acts? And, will it be contended that the corporation could act also independently of either the Board of Directors or of the receiver?

In the state of West Virginia then we say, the receiver so appointed is the legal successor of the corporation not only in the possession of its assets, but in its rights to the use of the corporate name. It is the legal successor there *at least* of the corporation itself.

(b) By the appointment of such receiver by the Circuit Court of Kanawha county, West Virginia, on February 1, 1909, every power of the corporation to act through its old Board of Directors, its former officers, or its former agents or attorneys, was at once suspended notwithstanding the provisions of such section 59.

As we have seen such receiver so appointed was a statutory receiver; that inasmuch as the powers of such receiver were derived from the statute the Circuit Court naming such receiver could neither add to nor take from his powers; that at once upon the appointment of such receiver the statutes vested in him the title to all the assets and property of such corporation wherever situate; that by such decree of dissolution the life and power of such corporation was forever ended, not only in West Virginia, but everywhere except as its corporate entity may be continued by the provisions of such section 59; that by the provisions of such section 59 on the appointment of a receiver of a dissolved corporation *only* the receiver could act for the corporation within the state of West Virginia.

As announced by this Court in Canada Southern Ry. Co. v. Gebhard, 109 U. S. 527, 537:

> "A corporation 'must dwell in the place of its creation, and cannot migrate to another

sovereignty' (Bank of Augusta v. Earle, 13 Pet. 588), though it may do business in all places where its charter allows and the local laws do not forbid. Railroad v. Koontz, 140 U. S. 12. But wherever it goes for business it carries its charter, as that is the laws of its existence (Relfe v. Rundle, 103 U. S. 226), and the charter is the same abroad that it is at home. Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (Paul v. Virginia, 8 Wall, 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation. Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such policy of the foreign government, and whatever is done by that government in furtherance of that policy, which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind

him. He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony. It follows, therefore, that anything done at the legal home of the corporation, under the authority of such laws, which discharges it from liability there, discharges it everywhere."

These three sections, 57, 58 and 59, of such Chapter 53 were then a part of the charter of such corporation.

All the contract-holders and the officers, stockholders of such corporation are certainly bound by these statutes. The contract debt which is claimed to be due the executrix of the will of Charles Le Tour Furey, is a claim for services performed by him while he was the general manager, vice-president and chairman of the board of directors of such corporation, a claim which could only be allowed by a vote of the stockholders, as we have seen. Certainly that claim, whether in the hands of his executrix, or in his own, is not outside of or independent of the reach of the statutes of West Virginia.

Knowing those statutes, the complainants in the bill in the Federal Court, the other two stockholders and the corporation itself submitted themselves to the jurisdiction of a court dependent upon, growing out of those very statutes, and asked that court to act in their behalf, hence such decree and appointment were made. The parties are bound by such decree and appointment everywhere. This is not confined to West Virginia.

In Kokomo City St. R. Co. v. Pittsburgh, etc., R.

Co., *supra*, where the question of the suspension of the powers of a corporation by the appointment of a receiver arose, the Court, speaking through Hanley Justice, on page 337 said:

> "It was the necessary effect of the appointment of a receiver that all rights of action of whatever description be suspended upon the part of the corporation. Under the order and direction of the court, the receiver became the representative, not of the creditors alone, but of the corporation and stockholders as well. * * * The action of the court in appointing a receiver for appellant corporation suspended appellant's right further to prosecute the claim against appellee. Under the order of the court, as the servant of the court and the representative of the corporation and of the creditors, the receiver could continue the action, dismiss or compromise it. Whatever claim appellant corporation had against appellee became an asset in the hands of the receiver, to be administered by him under the directions of the court appointing him."

That is, generally when a permanent receiver is appointed for a corporation under a statute pending proceedings to wind up the affairs of the corporation, or after dissolution, the right of the corporation to prosecute an action previously commenced by it is suspended.

The right of action vests in the receiver, and he may, under the direction of the court appointing him, continue or dismiss the action, as may be deemed best for the interests of the trust estate.

In Fitts v. Nat'l Life Ass'n, *supra*, it was held:

> "That the statute of Alabama, section 1298 of the Code providing for the continued existence

of dissolved corporations for five years for the purpose of prosecuting or defending suits, etc., has no application to foreign corporations. For existence here they depend solely on the state of their creation, and, therefore, a suit would not lie in Alabama even by attachment against a foreign corporation of Connecticut which had been dissolved by a court of competent jurisdiction in that state and a receiver appointed under the statutes of that state to take charge of and administer its assets."

In Clark v. Na'l. Linseed Oil Co., *supra*, held:

"Where a corporation institutes action and thereafter a receiver is appointed for it, the right to continue prosecution of the action is suspended as the corporation and the decision as to whether the action shall be continued or otherwise lies with the receiver under the direction of the court. Refusal by the receiver to continue the action is ground for a plea in abatement by the defendant. The appointment of a receiver necessarily substitutes a new management for that theretofore existing, and results in taking the control of the property from the officers to whom it has been entrusted by the stockholders."

In Cooper v. Philadelphia Worsted Co., *supra*, held:

"After a receiver has been appointed, it is held in New Jersey that suit can not be brought against a corporation unless the consent of the court be obtained. It is held the law, however, that actions pending at the time the receiver is appointed may be prosecuted to judgment, where no legitimate act prevents and injunction is not

obtained. In such case the receiver need not be made a party unless he applies to the court for substitution."

The case of Marion Phosphate Co. v. Perry, *supra*, was a case where Rachael Perry, a citizen of the state of Florida, brought her bill in the Chancery Court of Marion County, Florida, against the Marion Phosphate Co., a Georgia corporation, on a judgment previously obtained against the Chatham Investment Company; the Marion Phosphate Co. was the successor of the Chatham Investment Company, succeeding to all the former corporation's rights and liabilities. Thereafter the Marion Phosphate Co. had such action removed to the United States Circuit Court for the Southern District of the state of Florida on the ground of diverse citizenship and demurred to the bill, from which it appeared that prior to the obtaining of the judgment the Chatham Investment Company became dissolved. On this demurrer held:

"The Chatham Investment Company, incorporated under the laws of the state of Georgia, when dissolved according to those laws, became a dissolved corporation everywhere—dead in Florida as well as Georgia."

In Clark v. Natl. Linseed Oil Co., *supra*, Grosscup Chief Justice, speaking for the court on page 792 said:

"The effect of appointing a receiver over a corporation is to take the property out of the control of its officers to whom it has been entrusted by its stockholders."

In Eau Claire Canning Co. v. Western Brokerage Co., *supra*, held, we quote from syllabus 2:

"2 Comp. Laws of Mich. par. 10,859, in relation to the voluntary dissolution of corporations, provides that, on entry of a decree dissolving the corporation and appointing a receiver the corporation shall cease. Section 10,887 provides that, whenever a receiver of a corporation has been appointed, new suits may be brought and carried on by the receivers in their own names or in the name of the corporation; and section 8, c. 230, p. 2627, provides that corporations whose charters shall have been annulled by forfeiture, or otherwise, shall continue to be bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting or defending suits by or against them. After the rendition of a judgment in a court of Illinois against a Michigan corporation, the voluntary dissolution of the defendant was had and a receiver appointed, *but the Circuit Court in which the receivership proceedings were had, made an order authorizing the receiver to sue out a writ of error in the Supreme Court of Illinois, to review the judgment in question. Held, that the receiver had a right to sue out the writ of error in the name of the corporation.*"

In Groom v. Mortimer Land Co. et al., *supra*, decided January 23, 1912, by the Circuit Court of Appeals Fifth Circuit, held:

"A Texas stockholder of a New Jersey corporation cannot maintain a bill in Texas to wind up the corporation and distribute its assets through a receivership, where voluntary proceedings for dissolution have been previously brought under the laws of New Jersey (P. L. 1896, p. 295.

par. 53), which preserve the corporation's existence to wind up its affairs, and which makes the directors at the time of dissolution trustees in liquidation, etc."

The case of Parsons v. Charter Oak Life Insurance Co., *supra*, was a case very similar to the case in the United States Circuit Court in Illinois, in which the Fureys, appellees, are complainants. In that case a life insurance company organized under the laws of Connecticut owned real estate and had policy holders in Iowa, and, having become insolvent, a receiver was appointed by the Connecticut court. Afterward in a suit by Iowa creditors, the Iowa court appointed a receiver of the property located there, it being claimed that Iowa creditors had a superior right to such property, and that a foreign receiver did not control assets outside the state where he was appointed. Held:

"That as the statutes of Connecticut provide for receivers, it was a part of the contract with policy holders that, in case of insolvency, such receiver should marshal all the assets, so that his powers were not limited as those of a receiver usually are, and the Connecticut receiver controlled all the Company's assets; following Relf v. Rundle, 103 U. S. 222."

On page 310 of that case Mr. Shiras, judge, speaking for the court, said:

"As already stated, the charter of the Charter Oak Company secures to its policy holders and creditors the right to an equitable participation in the assets of the company, in case of insolvency and dissolution. To bring about such equitable distribution of its assets, the charter

and laws of Connecticut provide for the appointment of a receiver to take charge of the property of the company in case of its dissolution, and the duty imposed upon such receiver is not materially different from that imposed upon the state superintendent under the Missouri statute construed in Relf v. Rundle. For the purpose of collecting the assets of the company, he is in fact the successor of the dissolved corporation. He is in fact a trustee, representing the interests of the stockholders and creditors of the company; deriving his authority not alone from the order of the court appointing him, but from the charter of the company and the statute of the state creating the corporation. To establish their rights as policy holders, the complainants rely upon the provisions of the charter of the company, and, if the courts of Iowa can enforce the provisions of the charter and the rights conferred thereby in one respect, why not in another? The provisions of the charter estop the complainants, who, as policy-holders, are bound by its terms from denying the right of the other policy-holders to an equitable participation in the assets of the company; and they cannot object to the enforcement of the method provided by the charter and laws of Connecticut, forming part thereof, for securing such equitable distribution in case of the dissolution of the corporation. An essential feature of such method is the appointment of a receiver, with power to take possession of all the assets of the company, wherever situated, and, when such receiver has been duly appointed in the mode provided for in the charter, the policy-holders cannot deny his authority."

In Austen v. Columbia Lubricants Co., *supra*, a

default judgment had been entered against a corporation, after it had been duly dissolved; the corporation attempted to appeal from such judgment. Freedman, P. J., speaking for the court on page 498 said:

> "In the case at bar the corporation attempted to be sued had been dissolved, and was no longer extant, and this fact appears by the proof submitted by the attorney who seeks to appear for the defunct corporation. It is clear that the court below never could acquire jurisdiction of a dissolved corporation, and it is equally clear that such corporation could not authorize the appearance by an attorney."

The complainants in the bill in the United States Court at Chicago procured the dissolution and the appointment of the receiver in West Virginia. How could they be heard to deny the rights of that receiver or his authority?

It is useless to quote further from the authorities cited.

Could these same complainants, if a controversy existed, bring an action in the Federal Court in West Virginia against such Guaranty Company, after such decree of dissolution and the appointment of such receiver?

Would the provisions of section 59 upon which appellees rest their rights in the Federal suit in Chicago authorize the bringing of such suit, and could the corporation by its former officers appear in such Federal Court in West Virginia and give jurisdiction? If such corporation could not appear in West Virginia it certainly could not appear in Illinois, and that it could not so appear in West Virginia has been decided at least twice by the Supreme Court of West

Virginia in the two cases cited, one from 44 W. Va. 75; and the other 45 W. Va. 284.

But the appellee Potter, receiver, seeming to appreciate this condition has sought to keep the corporation alive not by the statute of the state creating it under whose statute it has been dissolved, but by a resolution made by the executive committee of such corporation on the day before the stockholders invoked the authority of the West Virginia Circuit Court for its dissolution and the appointment of such receiver. Such resolution is found in the Record on page 218 and is as follows:

> "Resolved further, That Messrs. Gorham & Wales, Attorneys of Chicago, Illinois, be and they are hereby retained, requested and directed to enter the appearance of said Company in any proceedings that may be instituted in any court, State or Federal, sitting in Chicago, Illinois, and in such proceedings to consent to the appointment of a receiver or receivers to take charge of and administer the assets of said Company located in the State of Illinois, or elsewhere, and to consent to the entry of any and all other orders and decrees in the cause that may be so instituted in Illinois, as they may think proper or as justice and equity may require, and throughout such proceedings last aforesaid to act for and on behalf of and represent said Company as its attorneys and solicitors therein."

But we affirm in answer that the power of attorney by a corporation as well as its contracts of agency terminate at once upon the dissolution of a corporation, the same as such contracts terminate upon the death of an individual. That is elementary.

In view of the premises our contention then is

that after the dissolution of such Guaranty Company by the decree of the West Virginia State Court and the appointment of such receiver, the former officers of such corporation had no power or authority to appear in the Federal Court in Chicago and give jurisdiction to that Court in such suit brought by the complainants therein. And, for the further reasons:

a. That there was no controversy in such suit between citizens of different states such as is cognizable by a Federal Court.

b. A suit to wind up the affairs of a dissolved West Virginia corporation can be maintained after such dissolution only in the State Court which dissolved such corporation.

c. The equity ground alleged in such bill was untrue.

d. The suit was brought under a collusive plan.

e. There was no real controversy.

V.

THE ORDER OF THE UNITED STATES CIRCUIT COURT SO APPOINTING EDWIN A. POTTER RECEIVER OF SUCH CORPORATION WAS CORAM NON JUDICE, VOID AND WITHOUT RIGHT, AS WERE ALL SUBSEQUENT ORDERS AND DECREES OF SUCH COURT BY WHICH EDWIN A. POTTER, AS SUCH RECEIVER, OBTAINED POSSESSION OF THE PROPERTY AND ASSETS OF SUCH DISSOLVED CORPORATION.

This follows as a matter of course.

We have said nothing in this brief on the question of the "jurisdiction of this Court," and our only reason is that we discussed that question in our former briefs when appellee Potter made the motion to dismiss our appeal on the ground that this Court had no jurisdiction. We have been compelled, in the dis-

cussion of this case, by reason of the Record, to refer to certain of the proceedings in a way which was distasteful, but we have sought to say nothing outside of the Record and which was not a legimate inference therefrom.

CONCLUSION.

Finally, we say, in our opinion, this Court should reverse the decree denying and dismissing the special intervening petition of appellant, Edwin M. Keatley, as receiver of American Guaranty Company of Chicago, and direct such United States Circuit Court to order its receiver, Edwin A. Potter, to forthwith turn over to and pay to this appellant, Edwin M. Keatley, as receiver of American Guaranty Company of Chicago, all and every of the money, assets and property of said American Guaranty Company of Chicago, which has come into his possession since February 2, 1909, with interest thereon from the date he as such receiver obtained possession thereof, with full costs and disbursements.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 612. 84.

EDWIN M. KEATLEY, as Receiver of the American Guaranty Company of Chicago, by appointment of the Circuit Court of Kanawha County, West Virginia,

Appellant.

—vs.—

CARRIE REBECCA FUREY; EDWIN A. POTTER, as Receiver of the American Guaranty Company of Chicago, by appointment of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, et al,

Appellees.

ARGUMENT FOR APPELLANT AGAINST MOTION TO DISMISS APPEAL.

GEORGE B. EDGERTON,
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Attorneys for the above named Appellant.

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upon dissolution in proceedings for such purpose against said Guaranty Company in the Circuit Court, Kanawha County, West Virginia, the domicile of the Company, and which intervention was made in an action in the said Federal Court brought by stockholders claiming to be creditors and joined in by all other stockholders subsequent to the decree of dissolution in the State Court.

Jurisdiction of the action below was grounded upon diversity of Citizenship and control of the defendant based upon an alleged voluntary appearance of the corporation. No service of process was ever attempted. The appellant raised the question of non-jurisdiction of the defendant, insisting the pretended appearance in writing by the former president and secretary was invalid after the death of the corporation and the selection of a Receiver under the laws of West Virginia to administer the property.

This was the sole question raised and was determined adversely to the Intervenor there by an express finding of jurisdiction.

STATEMENT OF FACTS.

All page references are to pages of printed Record.

Few of the facts, which are material from the appellant's standpoint have been included in Respondent's statement. We beg leave to briefly refer to them.

The American Guaranty Company of Chicago was a corporation organized under the laws of West Virginia, with its principal office at Charleston in said State, and doing its general business from its office in the City of Chicago, Illinois. Its ultimately authorized capital stock was Five Hundred Thousand Dollars ($500,000). There

had never been issued thereof but $92,600 par value (p. 5). The corporation did a large business in the issue or sale of investment, service and income contracts throughout the United States, Canada and Mexico.

About January 11, 1899, one, Charles LaTour Furey, became Vice-President of the Company and after June 23, 1903, until his death November 29, 1908, had peculiarly exclusive management and control of the entire corporate business and affairs (p. 5). At his decease, he owned $60,200 par value of the entire outstanding stock, the balance being owned $26,000 par value by Lewis W. Pitcher, Secretary, and $10,000 par value by James L. Bigelow, Treasurer of the Company, but the stock of both said last named officers was for years before its dissolution pledged to and held by the Corporation as security for debts owing to it by them respectively (p. 5).

The business had grown under the management of Furey until at the time of his death, it had outstanding contracts amounting to a possible or maturity value of $15,825,000.00 (p. 4). Furey's will left all this stock to the respondents, Carrie Rebecca Furey, wife, and Caroline LaTour Furey, daughter of the deceased, residents of the City of Chicago, Illinois (p. 3).

After Vice-President Furey's death, his wife and executrix, and his daughter above named, owning more than one-third of all the corporate outstanding stock, in form brought their bill in equity in the Circuit Court of Kanawha County, West Virginia, the County in which is situated Charleston, the home office of the corporation, demanding that the corporation be dissolved, that a receiver or receivers be appointed to take charge of and administer its assets and for such other relief as should be appropriate (pp. 23-28).

That bill was properly verified by both complainants on the 30th day of January, 1909, in the City of Chicago, and was signed by Hal. C. Bangs of that city as one of the solicitors. The complainants therein set out the course and condition of the business, the ownership of all the stock as above described, the inability of the complainants and other two stockholders, to agree upon a plan to continue the business, after the death of Mr. Furey, the fact that the Company then had on deposit cash and securities of over $550,000.00 and other live assets, exceeding $750,000.00 besides, totaling above $1,300,000.00 (p. 26); that the Company, aside from its obligations on its said contracts, had no liabilities whatever except to a nominal amount for current expenses, and except what might be owing to Furey and agents for commissions, that it had no liabilities of any kind in West Virginia, except to forty-eight contract holders not due or in default, that all the property and effects of said Guaranty Company were in Chicago, except some balances in banks outside and the conclusion of said three stockholders that it was to the best interests of said Company, its stockholders, and contract holders, that said Company should be dissolved and its affairs wound up and its assets distributed.

This bill was presented to said Circuit Court of West Virginia upon the first day of February, 1909. At the same time, was also presented a written appearance and consent to the prayer of the bill and entry of decree of dissolution of said Guaranty Company, the appointment of a receiver, and to the entry of all injunctions, orders and decrees, that equity and justice might require, signed by Frederick M. Steele, President, attested by L. W. Pitcher, Secretary, and signed by Angus W. McDonald, Solicitor for American Guaranty Company of Chicago (p. 29).

Moreover and singularly enough, Lewis W. Pitcher and James L. Bigelow, the other stockholders, by the same Hal. C. Bangs, Attorney, sign and present a written joinder as complainants in said Bill and join in the prayer (p. 29). Not satisfied, however, with such entry the said Pitcher and Bigelow at the same time file an additional and more urgent request for the decree of dissolution and an additional prayer for a receiver to administer its assets (p. 30).

Immediately the West Virginia Court was asked to and did decree the dissolution of the said corporation, American Guaranty Company of Chicago, and appointed V. L. Black, "Receiver of all and singular the property and assets of the American Guaranty Company of Chicago, of every description *within the jurisdiction of this Court*" to administer the same. All the creditors were restrained from interfering with any of the corporate property, and the receiver directed to take possession of the property "within the jurisdiction of the Court." (p. 53.)

Upon the following day, February 2, 1910, these same complainants who had on the previous day, as stockholders, secured the absolute dissolution of the corporation in West Virginia, and the appointment of a receiver, appeared in the United States Circuit Court at Chicago and filed their bill in Equity as alleged creditors of the American Guaranty Company of Chicago, based upon an alleged balance due to the deceased Vice-President Furey for services or commissions, but which had never been placed in judgment. As jurisdictional ground the bill expressly recites that the complainants for years continuously had been and then were citizens of the State of Illinois and residents of the City of Chicago; "that said American Guaranty Com-

pany of Chicago is a corporation duly organized and doing business under and by virtue of the laws of the State of West Virginia, and is not incorporated under the laws of any other state, territory or country; that it is a citizen of the State of West Virginia, and of no other State, territory or country"; that it was licensed to do business in Illinois and that the matters in dispute exceeded $2000.00, exclusive of interest and costs. That bill set up substantially the same allegations as noted in the West Virginia suit, and added averments showing the previous day's proceedings in the West Virginia Court and attached a copy thereof as an exhibit. It then alleges "12. That in consequence of the entry of the said decree of dissolution said American Guaranty Company of Chicago has become a trustee for its creditors and stockholders of all of its property, assets, and effects;" that the West Virginia receiver had no authority outside that state and that some of the contract holders threatened suit against the company by attachment or otherwise securing priorities over other contract holders, and will waste the assets unless a receiver be appointed to conserve and distribute the same. This bill is likewise verified by both complainants on February 1st, 1909, before the same notary who took the affidavit to the West Virginia bill, but is signed by Steere, Williams & Steere as solicitors. (p. 8. 9.)

Immediately an attempted written appearance by the said American Guaranty Company of Chicago and an express confession of the allegations of the bill and a consent to the appointment forthwith of a receiver of all the assets and effects of every description of the company, was made and filed, signed by Frederick M. Steele, President, and attested by L. W. Pitcher, Secretary, and under

the Corporate seal and also signed by Gorham and Wales, solicitors (p. 56).

Order appointing Edwin A. Potter as receiver was immediately entered covering all property and assets of every kind, which were ordered turned over to him. Full authority to bring or defend actions for or against the corporation, and all other powers were conferred and a bond of him required. The receiver was at hand, at once accepted, tendered his bond and the same was approved. (p. 57, 58.)

February 8th, following certain so-called contract holders committee by Gorham and Wales, its solicitors, intervened and became parties. The receiver proceeded to secure the assets of the corporation and to discharge his duties.

September 2nd, 1909, W. R. Gilliam, a contract holder, for himself and others, duly intervened in the still-pending West Virginia Action, asking for the discharge of Black and the appointment of another receiver therein to administer all the property and assets of the corporation wherever found. Counsel for the Chicago receiver and for the complainants appeared and was heard and an order then made, September 22nd, appointing Edwin M. Keatley, this appellant, such receiver with power and authority to take over all the property and assets of the corporation wherever found, and he duly qualified. (pp. 131, 132.)

Thereafter, and on the 27th day of October, 1909, said Edwin M. Keatley, filed his special intervening petition in this action setting up all the proceedings had in both suits and questioning the jurisdiction of the Federal Court, on the ground that the American Guaranty Company of Chicago dissolved February 1st, 1909, by the

West Virginia Court, and for which the Receiver had then been appointed, could not voluntarily or otherwise appear to confer jurisdiction over it upon the Federal Court in Illinois the next following day. (pp. 128-135.) Authority to file such special petition had therefore been granted by order of Court (p. 215). The American Guaranty Company of Chicago under its corporate seal and by Lewis W. Pitcher, Secretary, answered Keatley's petition instanter. The order permitting the said intervening petition required briefs on the question of jurisdiction and fixed the time within which they should be filed (p. 215).

The matter was fully argued and submitted and the Court rendered its opinion January 26th, 1910, denying the intervening petition of Keatley (p. 280-286) and on February 7th, 1910, a decree dismissing the same was duly entered, from which this appeal is taken.

BRIEF.

1.

The Appeal should not be dismissed for the absence of a certificate of jurisdiction because the record clearly established the facts necessary upon such appeal.

The informality or absence of such certificate here is fully supplied by the record.

The Steamership Jefferson, 215 U. S. 130.

This rule should be made absolute in cases where the Court below refuses to make such certificate.

11.

The jurisdiction of the Federal Court as such is involved, in this controversy, because of the failure to lawfully serve the defendant with process and because no lawful voluntary general appearance by the defendant was or could be made therein.

Davis vs. Railroad Co., 217 U. S. 157.

The sole question below was the lack of jurisdiction over the defendant.

ARGUMENT.

Upon the matter sought to be presented in this Court there has never been but one question. At the foundation lies the inquiry whether the United States Circuit Court in Illinois ever acquired jurisdiction of the defendant, American Guaranty Company of Chicago.

But two methods are known to our law, either voluntary general appearance or due service of process, as provided by Statute. No claim is made that service was even contemplated by delivering a writ, or service of chancery subpoena. If any jurisdiction has ever been had it was through the attempted voluntary appearance of the defendant accompanying the presentation of the bill and consenting to the prayer thereof.

The only ground upon which authority of the Federal Court to act can be predicated, is and must necessarily be the diversity of citizenship between the complainants and the defendant. Unless at the moment the matter was submitted to the United States Court for appointment of a receiver, the defendant, American Guaranty Company of Chicago, was in fact a citizen and legal resident of West Virginia, that Court could never exercise the power it professed to. No doubt the defendant had been such citizen and resident of the last named State, up to the hour of its dissolution by the formal decree of the proper Circuit Court upon regular and lawful proceedings to that end. But when the corporate life had been thus ended, and an officer of the Court appointed to take over and administer its property and assets, under express statutory provisions, it could no longer have been such a citizen of another State as to confer authority to act upon the United States Court. After that decree, it was as much beyond the pale of the law as a deceased individual would have been. Hence lacking the very necessary and indispensible element of diverse citizenship the authority of that Court was never lawfully invoked and all its proceedings in the suit are mere nullities.

The corporation came into being and was created a citizen only by reason of its incorporation under the pro-

visions of the West Virginia corporation Statutes. The same law provided the method of surrendering its business existence, and, when done, the corporation passed again to the void whence it had been created. It was absolutely unmade. It yielded its life and with it the entirety and citizenship which alone could be invoked and relied upon to support the jurisdiction of the Federal Court.

Its capacity to sue or to be sued was forever destroyed.

Mumma vs. Potomac Co., 8 Peters 281.

The corporation was extinct and was deprived of all power to act.

Milwaukee Ins. Co. vs. Sentinel Co., 81 Wis. 307.

Lum vs. Robertson, 76 U. S. 277.

"It (the corporation) had been dissolved and its franchises, rights and privileges declared forfeited and a receiver appointed in the State Court. The judgment was therefore no more valid against a non-existing corporation than it would have been if rendered for a like amount against a dead man. *** The corporation itself having expired, the suit itself had abated."

Pendleton vs. Russell, 144 U. S. 640.

We believe no serious difference can exist between us as to the effect of the absolute dissolution of the corporation. The contentions pressed by either side must and do arise upon the interpretation and application of the provisions of the West Virginia laws, authorizing the dissolution and intended, in such event, to safeguard the interests of all parties whose rights may be thereby affected.

It clearly appears from the various proceedings had in the State and Federal Courts that all were part of a preconceived plan to administer the assets in Illinois. Indeed

Counsel for the Illinois receiver rather proudly took the Credit in open Court for a clever performance in conceiving and executing the operations. The dissolution in the State Court was easily and regularly accomplished in the method explicitly outlined in the Statute. The limited receivership was, we would contend, invalid, but necessary to the plan, if effective, to have the property of the defendant in friendly hands in Illinois. It is immaterial, however, to the question here. But service upon or voluntary appearance by this dissolved defendant corporation in Illinois was an absolute and indespensible prerequisite to valid action there. Service of process could only be had upon certain officers and agents of the corporation and that seems to have been thought inadvisable. Hence recourse was had to a pretended voluntary appearance and consent to receivership by the president and secretary and under the seal of corporation. An additional authority for such appearance is attempted to be given to certain attorneys by a resolution of the executive committee of the defendant passed two days before the decree of dissolution in West Virginia. (p. 218.) But we dismiss the proposition as whimsical, on the theory that the dying corporation could not appoint its successor or executor, with power to exercise its cremated franchises after dissolution. This resolution, however, is proof enough of the underlying scheme. The respondents must stand or fall upon the attempted action of its officers in executing as such the supposed consent to action in the Federal Court, adopted in lieu of statutory service.

Justification of such attempted appearance and consent is founded solely upon the alleged authority of the law of the State of West Virginia. The laws of that State pertaining to dissolution of corporations, in force when the

proceedings were instituted to that end are particularly sections 57, 58, 59, Chapter 53 Code West Virginia, printed at pages 5, 6 & 7 of respondent's brief on this motion and section 56 of the same chapter, covering voluntary dissolutions.

Under the law, Section 56, a corporation could voluntarily terminate its existence by a vote of the majority of its capital stock and could divide its net property and assets. The *stockholders* must set aside *in the hands of trustees* or otherwise sufficient funds to pay the debts and liabilities. If creditors deem themselves not thereby secured, they can bring action in Chancery and have relief by injunction or receivership to administer the assets.

Under Section 57 not less than one-third of the stockholders may apply by bill in Chancery to the Circuit Court of the home office county to dissolve the corporation and the Court according to its principles and usages at Equity, may, if cause is shown, decree the dissolution and make such orders and decrees as justice and equity may require.

Section 58 authorized appointment of receivers to administer the assets of expiring or dissolved corporations, (among others).

Section 59 provides: "When a corporation shall expire or be dissolved its property and assets shall under the order and direction of the *board of directors then in office, or the receiver* or receivers *appointed for the purpose* by such Circuit Court ****, be subject to the payment of the liabilities of the corporation and the expenses of winding up its affairs, and the surplus, if any then remaining to distribution among the stockholders. * * * * And suits may be brought, continued or defended, the property, real or personal, of the corporation be conveyed or transferred

under the common seal or otherwise, and all lawful acts be done in the corporate name, in like manner and with like effect as before such dissolution or expiration, but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets, etc. * * * * *."

In the instant case, we are concerned mostly with the provisions above quoted. It is conceded that the stockholders had secured the dissolution of the corporation by formal and regular decree in the West Virginia Circuit Court February 1st, 1909, under and pursuant to Section 57 and that a receiver had been then appointed, with an attempted limited power over the assets on the face of the order taking only those within the jurisdiction of the acting court in that State. Such appointment was clearly under Section 58. The dissolution having been decreed, the provisions of Section 59, then required that the assets of the corporation be administered by the Board of Directors then in office, or by the receiver or receivers appointed for the purpose. The entire matter was before the Circuit Court and within the control of that Court only. It seems too clear for argument that the assets, by whichever authority administered, were primarily in the depository of the Court and with that Court alone resided the power to select the administrative board or receiver. The statute limited the selection, but the Court had free rein in the choice within the statutory list.

We submit no plausible argument can be advanced, and none has been offered, to uphold the theory that the directors took absolute charge of the assets or had the slightest scintilla of authority unless at the selection and appointment of the Court by formal order following dissolution. But the Court did not select the directors to so

administer the property. On the contrary, it appointed the other authority specified in the law, to-wit: the statutory Receiver. Assuredly the appointment of the Receiver deprived the Board of Directors of any power to act for or on behalf of the corporation.

It must be remembered that the entire management of corporate affairs had been committed to this court by the selection and formal action of all the stockholders, and voluntarily the corporation, by such action under the law, had elected to yield its entire assets to such administration as the Court selected within the provisions of the law.

The corporation was not obliged so to do. It might have adopted the authority granted to voluntarily dissolve and liquidate under Section 56 in which event, and only in that manner, the affairs of the corporation were without the control of any Court unless and until some stockholder or creditor should avail himself of the right to have the affairs of the corporation administered through the Court.

Having, however, adopted the other method, only the Court appointed by the law could act or grant authority to any individuals to act.

Surely both the Board and the Receiver could not act regardless of each other, the latter constituted by the Court, the other utterly ignored by it. Nor can it be contended that the Receiver could act only upon property within the jurisdiction of the appointing court by its order and the authority of the Statute, and still the then Board of Directors could act independent of the Court or its receiver in any other State.

It must be conceded that the State Court had supreme control and under its order and decree, the Receiver was

authorized to the exclusion of the Board. In other words, the Board had no authority to act whatever or wherever for the dissolved corporation after the decree was entered. This is further borne out by the attempted antemortem resolution of the executive committee exercising the full powers of the board, to give attorneys power to appear and bend it in litigation following its expected legal demise and by the additional fact that the corporation itself, through its officers and under its seal, attempted to join in the movements, resulting in the appointment of the Illinois receiver. Evidently the Board of Directors was convinced of its own dissolution.

If then, the West Virginia Court was in control of the corporate assets, and had appointed a receiver, was it possible for the defunct corporation, its board, officers or stockholders, to act in the corporate name outside the territorial jurisdiction of that State Court and without its direction or consent? The respondents are forced by this situation to claim authority for such attempted appearance and consent in the Federal Court under that sentence of Section 59 above quoted, providing that, so far as necessary to conserve, collect and convert and distribute, the assets of the defunct corporation, "suits may be brought, continued or defended, the property * of the corporation be conveyed or transferred under the Common seal or otherwise, and all lawful acts be done in the corporate name, in like manner and with like effect, as before such dissolution or expiration."

Under the circumstances of this litigation in the State Court, by whom could this authority be exercised? Plainly only by the receiver, unless and until the State Court, having jurisdiction and control of the parties and the property should make other order or decree. No other power

on earth could create authority to use the corporate name, or act for the corporation. The corporation and its officers and stockholders were entirely devoid of authority or right to act anywhere. It would seem ridiculous law to permit the State Court to decree the dissolution of the corporation and still provide, notwithstanding its death, that it might still act through its former board, irrespective of the control of the Court.

It will be noted that the authority granted to bring suits, and do other acts, does not create power in the *corporation* to so do but clearly equips only the proper representative of the court to act *in the corporate name* in like manner and with like effect, as the corporation could have acted before such dissolution.

It follows then that the effect of such law is not to extend the *corporate life* for certain actions made necessary after the declaration of dissolution as is expressly done by the Statutes of some other States. If the law of West Virginia had contained a provision like the law of Wisconsin for instance, expressly continuing the corporate existence for three years after dissolution to wind up the affairs. (Sec. 1764 Wis. Statutes 1898) more plausibility might be given to their position, though even in that instance, it is clearly the rule, that the Court which has jurisdiction of the corporate dissolution, must be called upon for exclusive direction of the affairs. We fail to see any foundation for the claim that the language of Section 59 relied upon by the respondents can be tortured into any support of a continued corporate life after dissolution, especially to administer the assets in a jurisdiction, wholly foreign to the only one empowered by law to decree dissolution and wind up the corporate business, and wholly without

the knowledge, consent or direction of that Court of primary jurisdiction.

As before suggested, the jurisdiction of the defendant corporation could have been acquired in the Federal Court only through this pretended appearance after dissolution or by the customary service of the chancery process upon the president and secretary of the corporation or one of them. Suppose such service had been made by delivery of process to such officers in Chicago on February 2nd, 1909, would it have been sufficient to subject the defendant to that Court's jurisdiction?

The State Court had already deprived them as well as the corporation of power to act. They were no more officers of the company because there was no longer any lawful organization. It must be borne in mind also that even under the contention of the respondents, if the appointment of the Receiver, by the State Court did not deprive all others of every right to act for the corporation, yet, the provisions of Section 59 expressly confined such authority to the *Board of directors* of the corporation. They have shown no expression of law conferring the slightest right to so act upon the corporation as such or upon any of the then officers or committees. They have shown no action of the then board conferring such right upon the President or secretary or both to make such appearance and consent in the lower Court.

Certainly in the presence of express statute designating the persons capable of acting, no others draw the authority without any action by those having the lawful right to act or appoint others to act. Indeed the respondents have never claimed the board authorized or directed such appearance. And, too, this furnishes additional rea-

son for scouting the legality of the aforesaid antemortem resolution constituting attorneys to personate the corpse.

Furthermore, this dissolution and receivership in the State Court was instigated and procured by the self-same interests, and at the suit of the self-same complainants who are now invoking the Federal jurisdiction without deference to the authority of the State Court.

We have then only a jurisdiction of the Federal Court based upon the attempted voluntary appearance by President and secretary of a corporation, which had been previously absolutely dissolved by lawful decree of the only Court having jurisdiction of persons and subject matter, and whose corporate affairs had been committed to the Receiver of that Court. That Court had power, but had elected not, to confide the winding up of affairs to the then corporate Board of Directors, and that *board* had not even attempted to authorize the deceased corporation to appear in such Federal Court, consenting to the administration of its affairs by a Receiver.

Keeping clearly in mind the exact status of the proceedings in West Virginia initiated by these complainants, the precise provisions of the Statutes applicable, the assumption of complete jurisdiction and control by that Court upon joint prayer of both complainants and defendant; the attempted limitation upon the receivers authority at the request and for the hidden purposes of the complainants; the subsequent repudiation by the State Court of such restrictions upon its jurisdiction; the absolute dissolution of the corporation before any attempted appearance and consent to jurisdiction in the Court below; the exclusion of corporation, officers, directors and stockholders from participation in the administration of affairs, the after appointment in the State Court of this Appellant as

statutory receiver and likewise the absence of all authority on the part of president and secretary to perform any corporate act after dissolution, we frankly submit, that the Honorable Circuit Court below obtained no jurisdiction in this action of the corporation defendant and hence has not power to act therein, except to direct its officers to turn over the assets, and property, wrongfully in their possession to the appellant herein.

II.

Answering the argument urged in favor of this motion to dismiss, we concede that no certificate of jurisdiction was made by the Honorable Circuit Court but contend that under the circumstances none is necessary to the review of the question raised here.

The appellant, Keatley, after his appointment and qualification as Receiver by the West Virginia Court, through his attorneys, gave formal and required notice to the attorneys or parties and Receiver in the Federal Court that he would ask permission to file his intervening petition in that Court and accompanied it with a copy of the proposed intervening petition. (Rec. p. 214.) After arguments, the Honorable Circuit Judge, ordered that leave be granted to file said petition instanter and that the respondents file instanter their respective answers, five days being allowed for replication. The Court also gave the appellant one week afterward in which to file his brief "*upon the question of jurisdiction*" and gave time for briefs for respondent and reply brief of appellant. (Rec. p. 215.)

On February 7, 1910, the Circuit Court rendered an opinion in writing and followed it with a decree expressly

finding that the Court "had jurisdiction in the premises" and dismissing the appellant's intervening petition." (Rec. p. 286.)

The law requires the certificate of the Judge of the Court below to the jurisdictional question but, in this case the Honorable Circuit Judge refused to sign any certificate without assigning his reason.

The appellant prayed an appeal from the decree dismissing his intervening petition solely upon the ground that the Court below had never obtained jurisdiction of the person of the defendant because of the lack of service of process on said defendant and because no proper or legal voluntary appearance by said defendant was or could be made in the said action. (Rec. p. 288.)

In allowing the appeal the Circuit Judge stated that he was of the opinion that no question of jurisdiction was involved in the order or decree appealed from *"but allowed said appeal without certifying to any jurisdictional question."* (Rec. p. 290.)

The Court below declined to grant a certificate, notwithstanding the provision of law requiring it. No reason is assigned unless we infer one from language above quoted and used in granting the appeal. It would then be that, if the Court below decided in favor of its own jurisdiction no certificate or appeal under Section 5 of the Act could be taken. If the lower Court's opinion that no question of jurisdiction is involved is justification for refusing the certificate directed by the Statute and which the appellant is entitled to, as a matter of right then the provision of the Act of Congress is nugatory and worthless, if also the requirement of the same act that such certificate of jurisdiction must be made to entitle one to a review in the appellate Court is held a prerequisite to such hearing above.

But in the decree of February 7th, 1910, from which appeal is prosecuted the Honorable Circuit Judge expressly found he "had jurisdiction in the premises" after arguments and briefs expressly upon that question had been submitted at the order of the Court. (Rec. p. 286.)

However, the petition for appeal was based solely upon the question of jurisdiction and the whole contest had been upon that proposition alone. The appeal was allowed upon that ground though the judge below again expressed the opinion that no such question was involved.

We believe, under such circumstances the question of jurisdiction is sufficiently certified to secure the consideration of this appeal.

United States vs. Larkin, 208 U. S. 333, 52 L. Ed. 517, 520.

Davis vs. Railroad Co., 217 U. S. 157, 54 L. Ed. 708.

The Steamer Jefferson, 215 U. S. 130, 54 L. Ed. 125.

Counsel for respondents makes strenuous argument that other matters were before and were decided by the Court below, than the single question of jurisdiction, and consequently direct appeal to this court, does not lie. The basis of this contention is that the intervenor Keatley, requested the lower Court to deliver over to him posession of the property claimed to now be wrongfully in the actual possession of the Receiver appointed by that Court. All through the litigation the basic question raised was the lack of jurisdiction in the Federal Court over the person of the defendant alleged to be a citizen of West Virginia, the complainants being Citizens of Illinois.

Failure of jurisdiction was founded upon the previous dissolution of the corporation defendant and the appointment of the Receiver in the State Court, and because there

was no corporation in being on the 2nd day of February, 1909, there could be no lawful voluntary appearance by it or its officers and therefore there was then no citizenship attaching to the defendant and consequently no diversity of citizenship necessary to Federal Jurisdiction.

Moreover the oral motion requesting possession of the assets of the defendant, in case the lower Court found a failure of jurisdiction was at the suggestion of that Court itself and was a mere corollary to the jurisdiction contention. If the appellant had in fact petitioned or moved only for such possession basing his right upon the lack of service or appearance, instead of directly attacking the power of the Court to act, still relying upon the grounds actually urged against jurisdiction, the review here of the refusal of such possession would have been just as clearly correct by direct appeal as it must be when taken expressly from the affirmance of the Court's jurisdiction. Thus clearly there was but that single question raised, considered and decided. Upon that question alone depended the lower Courts right to administer the assets and the intervenors right to assume control. There was no question regarding primary jurisdiction between State and Federal Courts even suggested. There was some discussion of the power of the State Court to limit the authority of its so-called statutory receiver but that was collateral only and arose entirely from the necessity of showing the lower Court if it had never had the assumed jurisdiction, that the appellant was authorized by the Statute of West Virginia as well as by his order of appointment to take control. He never based any right to those assets because his was the elder receivership, indeed for no reason or upon no suggestion except having been properly and lawfully appointed in the State or defendant's domicile, he was

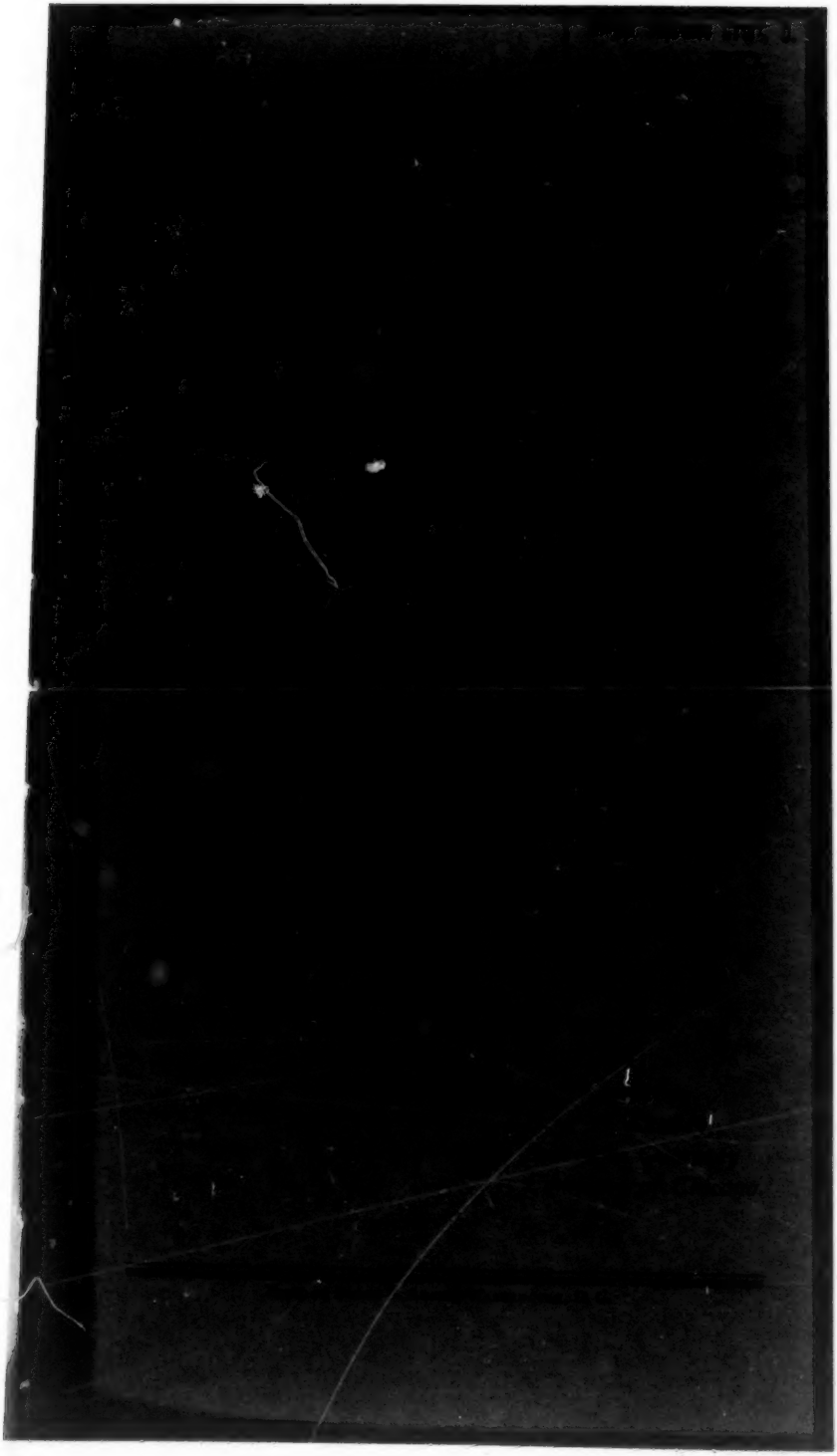
it is sufficient, as it ever has been, to invoke the established principles of the law of the land, regardless of the hopes or wishes of interested parties.

We respectfully urge that the motion to dismiss should be denied.

The reasons urged for such action apply with equal relevancy to the merits and, if consistent, with the rules of this Court, we would submit the request that the decree below be reversed.

George B. Edgerton,
Thomas H. Gill,

Solicitors for Appellant.



Supreme Court of the United States

OCTOBER TERM, 1912.

No. 84.

EDWIN M. KEATLEY, as Receiver of American Guaranty Company of Chicago, Under Appointment of the Circuit Court of Kanawha County, West Virginia, *Appellant*,

vs.

CARRIE REBECCA FUREY, as Administratrix of the Last Will and Testament of Charles La Tour Furey, Deceased; and also in Her Own Right; EDWIN A. POTTER, as Receiver of the American Guaranty Company of Chicago, by Appointment of the Circuit Court of the United States for the Northern District of Illinois, *et al.*

REPLY BRIEF FOR APPELLANT.

On page 10 of the brief of the appellee, is cited Miller's Admx. v. Newburg Orrell Coal Co., 31 W. Va., 836; and also the case in 47 W. Va., 838.

On the bottom of page 11 counsel for appellee says:

> "The same doctrine was laid down in a number of decisions in Virginia, from which state, as shown by Miller's Admx. v. Newburg Orrell Coal Co., 31 W.

> Va., 798, *supra*, the statute under consideration was taken."

Sections 57, 58 and 59 were not taken from the Code of Virginia. They were enacted into law in the State of West Virginia in 1882. (See Acts of West Virginia, 1882, chapter 96.) The Virginia statute is found in the Code of Virginia of 1860, chapter 56, section 30, page 324, which embraces the Act of the Virginia Legislature of 1836-7, page 46. It is as follows:

> "When any corporation shall expire, or be dissolved, or all its corporate rights and privileges shall have ceased, all its works and property, and debts due to it, shall be subject to the payment of debts due by it, and then to distribution among the members according to their respective interests, and such corporation may sue and be sued as before for the purpose of collecting debts due to it, prosecuting rights under previous contracts with it, and enforcing its liabilities, and distributing the proceeds of its works, property and debts among those entitled thereto."

This section 30 was printed in the Code of Virginia, 1873, chapter 56, as section 31, page 543, the only difference being in a change of the number of the section.

But in the law of Virginia there is no section corresponding to either section 57 or 58, of chapter 53 of the Code of West Virginia. That is, there is no provision for the dissolution of a corporation by allowing one-third in interest to bring a suit to wind up its affairs, as provided in section 57; nor any provision providing for the appointment of a receiver to take charge of and administer its assets, as provided by section 58 of chapter 53 of the Code of West Virginia.

It is well, in arriving at the intent of the legislature, to note the marked distinction between section 30, chapter 56,

of the Code of Virginia, and section 59 of chapter 53 of the Code of West Virginia. All that the former does is to make the assets of the corporation "subject to the payment of its debts by it, and then to distribution among the members." Section 59 of chapter 53 of the Code of West Virginia dedicates the assets where a receiver has been appointed "to the payment of the liabilities of the corporation, and the expenses of winding up its affairs; and the surplus, if any then remaining, to distribution among the stockholders;" but it shall be under the order and direction of a receiver, or receivers, "appointed for the purpose by such Circuit Court, as is mentioned in the 57th section." The Virginia statute had no provision for the winding up of a corporation, or bringing of a suit by one-third in interest, of the stockholders, nor for the appointment of a receiver, nor prescribing the powers or duties of a receiver. It would be conceded at once that under the Virginia statute the property would be a trust fund, and after expiration, the trust would lack a trustee, and a court of equity would marshal the assets in a proper case, and appoint a receiver to hold the assets, but such a receiver would be the ordinary equity receiver, and his powers would come from the court appointing him and not from the statute.

Under the West Virginia law, in force when the American Guaranty Company of Chicago was incorporated, and which was in force during its whole life and is in force yet, the statute provides for the appointment of a receiver, prescribes his duties, and sections 58 and 59 of chapter 53 commit the entire assets of the corporation into the hands of such receiver.

It is incomprehensible that counsel should make the statement that these sections were taken from the Code of Virginia. Upon every point contended for by appellant, and passed upon by the Circuit Court of Kanawha County, West Virginia, the Virginia statute, up till the time the State of

West Virginia was formed in 1863, and sections 57, 58, and 59 of chapter 53 of the Code of West Virginia were adopted, was silent. It follows that it is not true that the Court of Appeals of the old State of Virginia put any construction on the law in question which could have any force here.

It is well to note another strong difference between the statute of Virginia, in question, and that of West Virginia. Section 30 of chapter 56 of the Code of Virginia, 1860, provides that if a corporation shall expire, or be dissolved, that such corporation may sue and be sued as before. The West Virginia statute (section 59) gives the right to suit after dissolution, but limits it as follows:

> "But so far only as shall be necessary and proper for collecting," etc.
>
> But all acts of the corporation after expiration or dissolution shall be done, in the case of no receiver, by the board of directors then in office; and in the case of the appointment of a receiver, by the receiver or receivers appointed for the purpose by such Circuit Court, as is mentioned in the 57th section.

It is incomprehensible how anyone can reason that a statute would in one breath commit all the property and assets of a corporation to a receiver, and then, in the next breath, authorize the stockholders and directors to sell its property, use its corporate seal, or do other acts.

It is as clear as anything can be that the legislative intent was to allow the board of directors to wind up the corporation, convey its property, institute and defend suits, in cases where the corporation was dissolved but no receiver appointed. In such case the board of directors then in office are required to wind up the corporation in a manner fixed by the statute, and the statute was intended to modify the common law in such a case to the extent of prolonging the life of a corporation for the purpose of

conveying its property, under the common seal or otherwise, and instituting and defending suits by the board of directors *in the corporate name*. However, inasmuch as section 58 provided for the appointment of a receiver, either after expiration or dissolution, the legislative intent is also clear that there might arise cases where creditors or stockholders would be dissatisfied with the action of the directors then in office, and in that event, provision was made for a receiver to step in. But no one would contend that the receiver and the directors then in office could do the same thing at the same time.

The whole contention of the other side will vanish at once by supposing the following state of facts: Take it that a corporation has been dissolved by the Circuit Court of the proper county, upon the application of one-third or more in interest, of the stockholders, and a receiver has been appointed, as provided in section 58, to take charge of and administer the assets.

Suppose that the receiver so appointed should sell a piece of property and should make a conveyance of it; then suppose that the board of directors in office at the time of the dissolution of the corporation should make a sale of the same property and make a conveyance. Which conveyance would be good and transfer the property, the conveyance of the receiver or the conveyance of the board of directors?

Suppose the receiver should commence a suit that was necessary for the collection of some assets. But suppose the board of directors should step in and compromise the claim. Could they do it? Could they both act?

We cannot presume that a legislature would do the silly thing of vesting the same power in the old board of directors after the receiver was appointed that such board had before. Why, the very purpose of appointing a receiver might be that the board of directors had not been man-

aging the assets properly. The very purpose of the receivership might be to take from the negligent or fraudulent directors the power to convey the property. It can thus be seen that the statute clearly puts the power to do a corporate act, after the expiration or dissolution, when no receiver is appointed, in the hands of the old board of directors; but in the case of either expiration or dissolution, when a receiver shall be appointed, then the powers and rights of the old board of directors cease, otherwise there is no need to appoint a receiver.

Therefore, it is clear that when the defendant corporation was dissolved by the decree of a West Virginia court, all the powers of the corporation to sue or to be sued, and its power to convey property, or to do any corporate act, ceased immediately upon the appointment of a receiver in West Virginia for the following reasons:

1st. Because it is the plain intention of the statute to have a receiver, who stands disinterested as to all parties, do the things which otherwise would fall upon the board of directors, otherwise the appointment of a receiver would be a vain thing;

2d. Because the statute otherwise construed would have the old board of directors and the receiver doing the same thing at the same time; and

3d. Because there is nothing complicated or involved about the statute, and by its plain words, fairly construed, it commits the entire assets of the corporation to the charge and administration of the receiver, and vests in him title, and likewise gives him power to represent and stand for the corporation, and even to use its corporate seal.

In the quotation from the opinion in 47 W. Va., 838, on page 11 of appellees' brief, the counsel should have added the following words to such opinion:

> "This is a radical change from the common law. A defunct corporation cannot be sued. 68 Thomp.

> Corp., paragraph 7370, says: 'After a corporation becomes dissolved it can neither sue nor be sued, unless the faculty of suing or being sued is prolonged by statute for the purpose of winding up its affairs.' The suit allowed by said code section has for its mission the winding up of the affairs of a defunct corporation by decreeing upon its assets: 1st, for the payment of its debts; next for distribution of the surplus among the stockholders."

On page 12, counsel quotes from the White Mountain Paper Company v. Morse, 127 Fed., 646, and states the following:

> "A New Jersey corporation was adjudged a bankrupt in New Hampshire although a prior decree of dissolution had been entered in New Jersey under the statutes of that State."

The cases, *in re* White Mountain Paper Company, 127 Fed., 180; and White Mountain Paper Company v. Morse and Company, 127 Fed., 643, should be read together.

In re White Mountian Paper Company, *supra*, held that where, after involuntary bankruptcy proceedings had been begun against a corporation in the United States District Court of New Hampshire, and decree of dissolution was entered in the court of New Jersey, the domicile of the corporation, such decree did not affect the bankruptcy proceedings; and in the case of White Mountain Paper Company v. Morse and Company, *supra*, the record discloses the following facts: That after the court in New Hampshire had acquired jurisdiction in the bankruptcy proceedings, and said proceedings were pending, on July 3, 1903, a bill of complaint was duly filed in New Jersey against the White Mountain Paper Company, defendant, which court was a court of competent jurisdiction to hear and determine all of the matters involved; that such court made an

order appointing a receiver of all of the assets and effects of said White Mountain Paper Company; that thereafter such proceedings were had, that on the 31st day of August, 1903, said corporation was duly and completely dissolved, and that because of the statute in the State of New Jersey in reference to this topic, providing as follows:

> "All corporations, whether they expire by their own limiation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, and to dispose of and convey their property, and to divide their capital, but not for the purpose of continuing the business for which they were established."

It was held in the Circuit Court of Appeals that the judgment of the District Court, adjudging the corporation bankrupt, is affirmed.

Now at the time that such proceedings were had in the White Mountain case, section 59, on page 296, of the laws of New Jersey for 1896, was as follows:

> "Any action now pending, or to be hereafter begun, against any corporation which may become dissolved before final judgment, *shall not abate by reason thereof*, but no judgment shall be entered therein except upon notice to the trustees or receivers of the corporation."

It would be pertinent to inquire why counsel did not state the facts in the case. Counsel suggests on page 13 that it is difficult to understand the force of two cases cited by counsel for appellant, one from 47 W. Va., 45, and the other from 45 W. Va., 284.

In the case in 45 W. Va., cited in appellant's brief on pages 85 and 86, the words printed in italics on page 86, namely: "Said receiver, trustee, or assignee, being clothed with full powers of such corporations, and the right to exercise them insofar as necessary to wind up its affairs, is the sole legal representative thereof, with full authority to reduce to possession the corporation property wherever found," etc. Certainly, if such power was vested in the receiver it could not be at the same time in the dissolved corporation.

Counsel, on page 14, seems to build an argument upon the theory that counsel for appellant having obtained an order from the Circuit Court enlarging the powers of the receiver Keatley over those of receiver Black, that the doing of this is such a construction of the statute by appellant that no other construction can be placed upon it by the court.

Counsel for appellee is asked to answer the following question: If, as stated on page 42 of counsel's brief, "The Company's charter expressly provided that it shall keep its principal office or place of business in the city of Chicago, in the County of Cook, and State of Illinois," why did they allege in the bill filed in West Virginia,

> "5. That the principal office of said Guaranty Company ever since its incorporation always has been, and is, in the city of Charleston, in said Kanawha County, in the State of West Virginia?" (Rec., p. 25.)

For fear counsel shall not answer this question, we suggest that the reason is found in the provisions of section 57, which provides that those stockholders, of not less than one-third in interest, of the corporation, who *desire to wind up its affairs*, may apply by a bill in chancery to the Circuit Court of the county in which the *principal office* or place of business is situated.

Which is the truth?

To give that court jurisdiction these two things were necessary: 1st, to apply to the court in the *county* where the *principal office* was situated; and 2d, they must desire to wind up the affairs of the corporation.

We ask counsel further if it was intended to have a receiver of only limited jurisdiction why did the complainants pray for the appointment of a receiver "to take charge of and administer the assets?" Why did the other stockholders join in the prayer and particularly state "they respectively request that the said court shall grant the decree of dissolution of said American Guaranty Company of Chicago and appoint a receiver to take charge of and administer its assets?" (Rec., p. 30.)

Why did the corporation itself appearing pray "the appointment of a receiver to take charge of and administer its assets?" (Rec., p. 29.)

Why did the Court in its decree find that the prayer of "the complainants therein should be granted?" (Rec., p. 53.).

Why was Receiver Black appointed at all, and of what was he appointed receiver, if the corporation domiciled at West Virginia, having its principal office there, had no property within that State? Was it not a vain thing to appoint a receiver of nothing and require him to give bond?

Why did the complainants in the bill filed in the West Virginia Circuit Court make it appear that the corporation sought to be dissolved was a "going concern," and that after the payment of its debts and liabilities it would have several hundred thousand dollars left to distribute to its stockholders? Did not counsel know at that time that this corporation was insolvent?

Would the Circuit Court of West Virginia have entered the decree of dissolution had the court known the corporation was insolvent? Anyone reading the West Virginia de-

cision must conclude, if the facts as alleged are true, that the corporation was a wealthy one and had much property to divide among its stockholders. Why allege in the bill in Chicago that said corporation's stock was worth more than par?

Counsel says, on page 27: "There is no provision whatsoever in West Virginia for making any receiver appointed in dissolution proceedings a *quasi-assignee* of the company, or trustee, or representative of the company." This court held in Bernheimer vs. Converse, 206 U. S., 516, that a Minnesota statute very similar to section 58 made a receiver appointed under that statute a *quasi-assignee* or substantially that, and that the doctrine of the Relf vs. Rundell case applied.

Counsel, on page 29, makes the following comment in his brief:

> "If the title to the Guaranty Company's property was vested in the receiver by virtue of the statute, and not by virtue of the order appointing him, then it is strange that when appellant was appointed receiver September 22, 1909, and the first receiver, Black, was removed, the Guaranty Company and not the first receiver was directed to convey the property to appellant."

Possibly counsel for appellant took an unnecessary step in having the order made, directing a conveyance from the corporation. What of it? That proves nothing.

This is suggested to counsel for appellee: Suppose the receiver Black had died. Could not his position be filled? Taking the Relf v. Rundell case, suppose the insurance commissioner had died. Suppose another one had been elected. Would not the title have been in the new commissioner? The title to the property under the Missouri Act upon the dissolution of the insurance company was in the insurance commissioner and no specified person, "and to *his* successor in office."

The title to the property under the West Virginia statute was in the receiver appointed by the Court, not in any particular person.

Black was removed because he was an improper person to be the receiver.

There can be no question but that if the Court had power under the circumstances to name a competent person, it had power to remove an incompetent person and name a competent one.

Counsel says, on page 19 of his brief, "the total funds collected by receiver Potter, as shown by his inventory, were $1,409,234.07;"

On page 52, "the cash and securities in possession of appellee, as shown in inventory compiled by him on March 26, 1909, were $1,902,234.07." Of course, counsel has made these mistakes by inadvertence.

On page 264 of the record, the net claimed assets are shown to be only $792,864.99, and of these $565,891.37 was a special fund belonging to the contract holders. See record page 262.

Counsel, on page 21 of his brief, says: "The contract holders have no interest in the controversy, excepting as creditors, and the bill which was filed by the appellants as stockholders and creditors was filed not only on behalf of all other stockholders, but also on behalf of all other creditors of the company."

Counsel seems to have forgotten that the claim for the services of Furey, deceased, was at most only a simple contract debt. While the contract holders were lien-holders; by virtue of the contracts they each had a lien upon the assets in the hand of the Royal Trust Company, the trustee.

This corporation by reason of holding out to the public and incorporating into its contracts a statement that it had in the hands of the trustee an amount equal to 75 per cent of the cash surrender value of the policies, certainly when

that corporation became insolvent, and more, became dissolved, could not take such assets from the hands of such trustee and make them subject to the expense of a receivership and so deplete the assets which in equity belong to the contract holders and were to be paid over to them on dissolution. (Rec., p. 97.)

And as appears from the petition of the receiver, the $565,000.00 held by said Royal Trust Company was not equal to the sum required by the contract and that the corporation still owed the sum of $55,630.18. (Record, p. 72.)

Counsel says the Royal Trust Company was not the trustee, but a mere depository. (Brief of the appellee, p. 15.)

This agreement between the Royal Trust Company and the dissolved corporation is found in Record, pages Nos. 68 and 71. We believe the reading of that agreement will convince anyone that the Royal Trust Company was the trustee of an active trust.

We quote a few of the provisions of that contract:

> "Eighth. Upon surrender to the company of any special contracts upon which any reserve shall have accumulated, and been deposited with said trustee, said party of the first part shall be entitled to withdraw an amount from said reserve fund proportioned to 75 per cent of the withdrawal value thereof, upon evidence to said trustee of the cancellation of said special contract." (Record, p. 70.)
>
> "Thirteenth. If for any reason the party of the first part should desire to terminate this contract and transfer all or a part of the trust fund accumulated to another trustee or trustees, it shall have the right so to do upon giving thirty days notice in writing to the party of the second part, and an acknowledgment in writing duly signed by the new trustee, receipting for the securities so transferred shall release the party of the second part, the Royal Trust Company, from all

> further obligations to the amount so transferred either to the party of the first part, the American Guaranty Company of Chicago, or to any person or persons whomsoever." (Record, pp. 70, 71.)
>
> "Tenth. In case of the dissolution of the party of the first part the entire reserve held hereunder shall be divided among the holders of the special contracts in the proportion which said reserve bears to the net withdrawal value of each of said special contracts outstanding."

When this corporation was dissolved by its own request and the request of all its stockholders, this money at once became the property of the lien holders, the contract holders. But could a stockholder of this insolvent, dissolved corporation procure the appointment of a receiver on a simple contract indebtedness, if such existed, and in such receivership proceedings cause to be taken from the trustee that trust fund without notice to the lien holders, or contract holders, and without making the Royal Trust Company a party?

A statement of the proposition, it seems, is sufficient without comment.

Counsel says, on page 20 of his brief:

> "Counsel also suggests that all the stockholders of the Guaranty Company were necessary parties, but that two of them, Bigelow and Pitcher, are citizens of Illinois and are defendants to the case and, therefore, defeat the jurisdiction of the court below."
>
> "The answer to that position is that the record does not show the citizenship of Bigelow and Pitcher, and they are not defendants, and are not indispensable parties."

We supposed the rule to be that it was encumbent upon the party bringing the suit to show the citizenship of the various parties, and we do not think that that is not the rule even now.

Quoting further, counsel says:

> "It is also said the bill does not make Bigelow and Pitcher defendants and they have got into the suit only by filing their consent to the relief prayed for in the bill and for the appointment of a receiver. If they could be regarded as parties at all they would be ranged with the complainants. Under no circumstances can they be ranged with or treated as defendants. This must be so in view of the consent which they filed, there could not be, and was no possible controversy between them and the complainants."

But the same is true of the Guaranty Company. It has given the same consent that Bigelow and Pitcher gave, therefore, it can be ranged with the complainants.

And it is not an unusual thing for, in a proper case, a receiver to be appointed on the petition of the corporation itself.

It is suggested then that this does not assist counsel.

Counsel does not see that the fraud on the court in West Virginia in alleging in the complaint the solvency of the corporation and that it was a going concern; that the same thing being done in the Chicago bill were such fraud as would distinguish this case from any of the cases cited; to show that where the parties agreed to go into a Federal Court, that the fact of an agreement will not prevent the Federal Court from taking jurisdiction.

On page 49, counsel for appellee have quoted from 208 U. S., page 111, as follows:

> "That the parties preferred to take the subject-matter of the litigation into the Federal courts instead of proceeding in any of the State courts is not wrongful so long as no improper act was done by which the jurisdiction of the Federal court attached. The motive for bringing the suit there is unimportant."

But in that case the late Justice Peckham, speaking for the Court says:

> "We find no evidence of collusion and the Circuit Court found there was none. * * * There is no claim made that the averments in the bill were untrue, or that the debts named in the bill as owing to the complainants did not in fact exist; nor is there any question made as to the citizenship of the complainants, and there is not the slightest evidence of any fraud practiced for the purpose of thereby creating a case to give jurisdiction to the Federal Court."

This immediately precedes what counsel has seen fit to quote. But appellant claims that all these things, which were not found in that case, exist in the case at bar.

On page 51, counsel says, referring to the Royal Trust Company and the friendliness of such company, as suggested by appellant's counsel:

> "During all that time the Federal Court had been continuously administering upon the estate, it entered many orders, and disposed of a sharp controversy with the Royal Trust Company."

Let us again enumerate concerning the Royal Trust Company. This sharp controversy, commented upon, on pages 50 and 51 of appellant's brief, we refer to at this time.

It can hardly be considered a controversy that was sharp. Only to expedite matters the Royal Trust Company voluntarily appeared on the same day in which Receiver Potter filed his petition. Moreover on the very next day after Potter was appointed receiver, the Royal Trust Company wrote a letter, in answer to a telephone call, covering four pages of the printed record. Record, pp. 53-67.

Counsel says, on page 52: "Eight months before the West Virginia Court appointed appellant or authorized any receiver to take possession of any property outside of the jurisdiction of that Court, the Federal Court had already taken jurisdiction over the *res*."

And in other places in the counsel's brief reference is made to the delay of the appellant, or of petitioner Gilliam, or of other contract holders to do anything except submit to what was being done in the Federal Court.

The attention of this Court is called to the contract holders' agreement, found in Record, page 272-274. These contracts were sent out to the various contract holders long after the steps taken in the Federal Court had enabled the Receiver Potter to take the property from the Royal Trust Company.

Up to that time there was no authority whatever for any appearance by the contract holders' committee in behalf of any of the seven thousand contract holders.

Referring to the record on pages 175 and 176 the Court will find the first notice sent to the contract holders requiring them to file proof of claim, etc. This was on May 29, 1909.

It will thus be seen that the reason no action was taken is because all this thing was done in a corner, in the Court, without the contract holders being apprised of what was going on.

Again, we suggest to this Court, that if as a fact the stockholders had paid nothing for their stock, the receiver appointed by the Federal Court could not maintain an action to recover the value of such stock from the present stockholders.

Nor if there was fraud practiced by the board of directors could that receiver proceed against the several directors.

Only by the receiver appointed by the Court at the domicile of the corporation, when given such power by the statute itself, can such actions be maintained. This is the doctrine of the Bernheimer vs. Converse case in 206 U. S.

And finally we suggest again to this Court that sections 57, 58 and 59, of chapter 53 of the Code of West Virginia, are a winding up statute, and only the receiver appointed by the Court under those sections could do full justice, and because of that fact those sections were enacted.

But it is unnecessary to go further into this statement of facts. Counsel for appellant in their brief have made a fair presentation of the facts and we are content to leave such statement with the Court. There can be litle doubt, it seems to us, that there was collusion and fraud practiced to give the Federal Court jurisdiction in this case if the corporation had sufficient power after its dissolution under the statute of West Virginia to appear as they sought to do. We cannot suppose that it was the intent of the legislature of West Virgnia to pass any law of that kind. We cannot believe that a proper construction of such statute continues the life of the corporation after the proceedings which were had on the 1st of February, 1909, by which such corporation was dissolved and a receiver appointed.

Respectfully submitted,

F. W. HOUGHTON,

GEORGE B. EDGERTON,

THOMAS H. GILL,

CHILTON, MACCORKLE & CHILTON,

Attorneys for Appellant, Edwin M. Keatley, as Receiver of the American Guaranty Company of Chicago.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. [redacted] 84.

EDWIN M. KEATLEY, as Receiver of American Guaranty Company of Chicago, under appointment of the Circuit Court of Kanawha County, West Virginia, *Appellant,*

—vs.—

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in her own right; Edwin A. Potter, as receiver of the American Guaranty Company of Chicago, by appointment of the Circuit Court of the United States for the Northern District of Illinois, et al.

APPELLANT'S BRIEF AND ARGUMENT ON MOTION TO DISMISS APPEAL.

F. W. HOUGHTON,
Attorney for Appellant,
Edwin M. Keatley, as Receiver, etc.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1910.

No. 612.

EDWIN M. KEATLEY, as Receiver of American Guaranty Company of Chicago, under appointment of the Circuit Court of Kanawha County, West Virginia, *Appellant,*

—vs.—

CARRIE REBECCA FUREY, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and also in her own right; Edwin A. Potter, as receiver of the American Guaranty Company of Chicago, by appointment of the Circuit Court of the United States for the Northern District of Illinois, et al.

APPELLANT'S BRIEF AND ARGUMENT ON MOTION TO DISMISS APPEAL.

THE APPEAL.

This is an appeal from the final decree, of the Circuit Court of the United States for the Northern District of Illinois, dismissing the special intervening petition of Edwin M. Keatley, as receiver of Amer-

ican Guaranty Company of Chicago under appointment of the Circuit Court of Kanawha County, West Virginia.

Edwin M. Keatley as such receiver had been given leave by such United States Circuit Court to file his special intervening petition for the sole purpose of protesting the *want* of jurisdiction of such Circuit Court as a Federal Court.

This appeal is taken under section 5 of the act of March 3rd, 1891.

The appeal is on the question of the jurisdiction of such Federal Court alone.

The record shows that the only question determined by such United States Circuit Court in the decree rendered and from which the appeal is taken is the *want* of the jurisdiction of the United States Circuit Court as a Federal Court.

The written opinion of the Circuit Judge duly authenticated and returned herewith clearly shows the only question determined below was the question of the jurisdiction of said United States Court as a Federal Court.

The petition for leave to appeal and the assignment of errors each shows that the sole question on this appeal is the question of the want of jurisdiction of the said United States Circuit Court as a Federal Court.

The order of the United States Circuit Judge allowing the appeal (and wherein such Circuit Judge, in effect, refused to certify the question of jurisdiction), shows that the appeal is taken on the question of jurisdiction alone.

The question of want of jurisdiction arises, as contended by appellant, as follows: That the said United States Circuit Court never in any way acquired jurisdiction over the person of the American Guaranty Company of Chicago, formerly a corporation of the state of West Virginia, defendant in the action in which this proceeding was brought:

(a) Because, prior to the commencement of such action in such United States Circuit Court, said American Guaranty Company of Chicago had been dissolved by a decree of the Circuit Court of Kanawha County, West Virginia, a court of competent jurisdiction, under the provisions of the Code of West Virginia, and a statutory receiver appointed to take charge of and distribute the assets of such corporation under the order of the court appointing such receiver.

That such decree of dissolution was obtained and such receiver appointed in a suit brought by a part of and joined in by all of the stockholders of such corporation; and, in such suit, the corporation itself, to-wit, the American Guaranty Company of Chicago, filed a consent answer.

(b) That the only jurisdiction, if any, ever acquired by the United States Circuit Court was by the voluntary appearance and consent answer of such dissolved corporation by its former president and secretary and by certain attorneys who signed as the solicitors of the defunct corporation.

(c) That at the time of the commencement of such action in the Circuit Court of United States such American Guaranty Company of Chicago by

virtue of such decree of dissolution and the appointment of such statutory receiver to take charge of its assets and wind up its affairs under the order of such Court so decreeing its dissolution and so appointing such receiver, by the provisions of the Code of West Virginia had ceased to exist, and its officers had no power or authority to appear in any court for the purpose of giving jurisdiction to such court for any purpose whatever. That such attorneys Gorham & Wales who appeared as solicitors for such American Guaranty Company and as such signed such consent answer, had no power or authority to appear for such corporation, and, if any such power or authority had ever been conferred upon such attorneys prior to the dissolution of such corporation such power and authority ceased at once upon such decree of dissolution.

Hence, the said United States Circuit Court never acquired any jurisdiction over the said American Guaranty Company of Chicago, and hence had no jurisdiction of the assets of such corporation.

Because of the premises the orders made and entered in said United States Circuit Court are, and each and all of them, *coram non judice* void and without effect.

OBJECT OF SPECIAL INTERVENTION OF KEATLEY.

The sole purpose and object of special intervenor Edwin M. Keatley as such receiver, the appellant in this action, was and is to raise such question of the

want of jurisdiction of the United States Circuit Court as a Federal Court.

For such purpose Edwin M. Keatley, as such receiver, petitioned the said United States Circuit Court and moved for leave to intervene.

For such purpose alone the United States Circuit Court allowed such receiver, the appellant herein, to file his intervening petition in such action.

On the hearing below, the United States Circuit Court decided and found that it had jurisdiction of the person of the American Guaranty Company and then entered the decree dismissing the intervening petition of Edwin M. Keatley.

From such decree, on the grounds stated, the appeal is taken to this Court.

Because the statement of facts made by attorney for Receiver Potter is deemed insufficient, we make the following:

STATEMENT OF FACTS.

(*All record references are to the printed pages.*)

CODE OF WEST VIRGINIA.

Sections 57, 58 and 59 of the Code of West Virginia, are printed on pages 5, 6 and 7 of the brief of Mr. Levy Mayer, attorney for Edwin A. Potter, receiver.

Section 57, of such Code, provides the method by which the Circuit Court of the County in which the principal office or place of business of a West

Virginia corporation is situated may dissolve such corporation at the suit of a stock-holder or stock-holders owning one-third of the capital stock of such corporation.

Section 58 provides: "When a corporation * * * is dissolved or before its * * * dissolution, upon sufficient cause being shown therefor, such court, as is mentioned in the preceding section, may, on application of a creditor or stock-holder, appoint one or more persons *to be receivers to take charge of and administer its assets;* and whether such receiver be appointed or not, may make such orders and decrees and award such injunctions in the cause as justice and equity may require."

Section 59 declares who shall take charge of and administer the property and assets of a dissolved corporation both when no receiver has been appointed and when a receiver has been appointed, viz:

I. *WHEN NO RECEIVER HAS BEEN APPOINTED.*

> "Sec. 59. When a corporation shall expire or be dissolved, its property and assets, shall, under the order and direction of the Board of Directors then in office, * * * be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining to distribution among the stock-holders according to their respective interests. And (to that end) suits may be brought, continued or defended, the property, real or personal, of the corporation be conveyed or transferred, etc."

II. *WHERE A RECEIVER HAS BEEN APPOINTED.*

> "Sec. 59. When a corporation shall * * * expire or be dissolved, its property and assets, shall, under the order and direction of * * * the receiver or receivers appointed for the purpose by such Circuit Court as is mentioned in the 57th section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stock-holders according to their interests. And (to that end) suits may be brought, continued or defended, the property, real or personal, of the corporation be conveyed or transferred, etc."

In the first case where no receiver has been appointed of a dissolved corporation suits may be brought etc. by order of the Board of Directors.

In the second case where a receiver has been appointed of a dissolved corporation suits may be brought etc. under the direction of such receiver or receivers.

SUIT IN EQUITY FOR DISSOLUTION AND APPOINTMENT OF RECEIVER IN KANAWHA COUNTY CIRCUIT COURT, WEST VIRGINIA. REC. PP. 23-51; 139-162.

On February 1, 1909, the above named Carrie Rebecca Furey, as executrix of the last will and testament of Charles La Tour Furey, deceased, and in her own right, and Caroline La Tour Furey by her next friend, as complainants, filed a bill in the Circuit Court of Kanawha County, West Virginia, against the American Guaranty Company of Chicago, defendant.

In such bill it was, in substance, alleged: "That Charles L. Furey died testate in Chicago, Illinois, November 29, 1908; that his last will and testament was duly admitted to probate in Cook County Probate Court, Illinois, December 8, 1908, that on the same day letters testamentary duly issued out of such court to Carrie Rebecca Furey; that she at once duly qualified as sole executrix and is still acting as such. That by such will there was devised to Carrie Rebecca Furey and Caroline La Tour Furey, surviving widow and daughter, respectively, of such testator, all his estate share and share alike; that both complainants lived and still live at Chicago, Illinois."

"That at the time of his death said Furey owned 602 shares, out of 962 shares then and prior thereto issued, of the capital stock of the American Guaranty Company of Chicago; that the remaining 360 shares of such capital stock were then and there owned, and for several years prior had been owned, 260 shares by Lewis W. Pitcher and 100 shares by James L. Bigelow. That said capital stock of both Pitcher and Bigelow had been held for several years by such American Guaranty Company as security for loans made by such company to said Pitcher & Bigelow. That then and there and for several years prior said Pitcher and Bigelow had been Secretary and Treasurer respectively of said American Guaranty Company."

"That such Guaranty Company of Chicago was organized under the laws of West Virginia July, 1892; that since April 13, 1901, the authorized capital stock of such corporation has been and is 5,000 shares of the par value of $100 each or $500,000; that, by the

charter the corporate existence of such corporation will end January 1, 1942; that among the objects for which said Guaranty Company was incorporated was, to enter into contracts with individuals and firms by which after a certain number of payments of certain amounts at stated times, the Guaranty Company undertook to pay a certain stated income for a certain number of years; that the principal office of such Guaranty Company ever since its incorporation has been and is in Charleston, Kanawha County, West Virginia; that its administrative offices have been and are in Chicago, Illinois. Rec. p. 25.

That on December 15, 1908, said American Guaranty Company had and now has outstanding and in full force and effect, contracts of a total nominal value or possible contingent amount aggregating $15,825,000 dollars; that the amount of said contracts vary from a minimum of $1,000 to a maximum of $10,000 upon the dates of their maturity.

That said contracts mature at periods of ten, fifteen and twenty years from their respective dates of their issue.

That there are about 6,500 of said contracts now outstanding which are scattered throughout the *United States, Canada and Mexico.*

That said contracts are denominated "investment," "service" and "income" contracts; that sample copies of same are found in exhibits C, D and E respectively attached to such bill.

That said investment and service contracts provide by their terms that, as security for the redemption of the same, said Guaranty Company shall keep

in trust moneys and other securities to such an amount, as shall at the time equal in the aggregate seventy-five per cent of the cash value of said contracts etc.

That pursant to the provisions so contained in said contracts, said Guaranty Company did deposit and now has on deposit a fund consisting of cash and other securities aggregating over $500,000; that in addition to said fund said Guaranty Company now has assets consisting of cash, securities, bills receivable, loans to contract holders, and other assets all estimated to be worth over $750,000.

That on June 23, 1903, the said Charles La Tour Furey being then and there vice-president of such Guaranty Company, at a meeting of the Board of Directors the following resolution was duly and unanimously adopted:

> "Resolved, the Vice-president, by virtue of his office is hereby constituted chairman of the Board of Directors, and is to assume and perform all the duties of the president, it being also understood that the vice-president shall take upon himself the duty of generally supervising all details and operation of the business." Rec. p. 27.

That pursuant to said resolution and in compliance therewith said Charles La Tour Furey as such Vice-president, did continuously from such date until the time of his death, act as chairman of the Board of Directors of said Guaranty Company and assumed and performed all the duties of President thereof. Rec. p. 27.

That under the administration of said Vice-president, who was an expert in the business of such Guaranty Company, the Guaranty Company increased from the total outstanding value of its contracts of $3,000,000 to $15,825,000 at the time of his death; that such increase was due largely to the expert knowledge and ability of said Vice-president.

That neither Carrie Rebecca Furey nor her daughter have any knowledge of such business of such Guaranty Company; that no one can be found to take the place of the Vice-president, in the management of such Company, who has his ability.

"That in view of the premises your oratrices and said Pitcher and Bigelow, together owning all of the issued stock of said Guaranty Company, have concluded that it is to the best interests of said Company, its stockholders and all of its contract holders, that said company shall be dissolved and its business and affairs wound up and its assets liquidated and distributed in accordance with the rights of those entitled thereto; that other than its obligations on said contracts, said Guaranty Company has no liabilities whatever, except to a nominal amount for current expenses, and except what may be owing for commissions to said Charles La Tour Furey and agents; that said Guaranty Company has no liabilities of any kind in the state of West Virginia other than to 48 contract holders, none of whose contracts has matured and upon none of which is said Guaranty Company in any way in default, and the total surrender or cash value of which does not exceed $9,751.44."

"That all of the property and effects of said Guaranty Company are in said city of Chicago, except a few cash balances in little more than nominal amounts due to said Guaranty Com-

pany from about 15 banks outside of Chicago which have been the collecting agents of said Guaranty Company."

"9. That your oratrices, constituting and being more than one-third in interest of the stockholders of said Guaranty Company, desire to wind up its affairs, and with said Pitcher and Bigelow, who also desire to wind up its affairs, constitute the entire interest of the stockholders of said Company.

"Wherefore, the premises considered, your oratrices make said American Guaranty Company of Chicago a party defendant hereto and pray that process, in due form, returnable as provided by law, may issue against it; * * * that this court decree a dissolution of said American Guaranty Company of Chicago, and make such orders and decrees, and award such injunctions in the cause as justice and equity may require; and appoint one or more persons to be receivers to *take charge of and administer the assets of said defendant company*, and grant such other and appropriate relief as may be proper in the premises." Rec. pp. 27, 28.

That said bill was properly verified and signed by Hal. C. Bangs (of the firm of which Mr. Levy Mayer, attorney herein, is the head), Brown, Jackson & Knight, solicitors for complainants. Rec. p. 29.

At the same instant the American Guaranty Company of Chicago, defendant, appeared and filed the following consent answer.

"(Title.) The American Guaranty Company of Chicago, defendant in the above entitled cause, hereby enters its appearance herein and consents to the granting of the prayer contained in said bill of complaint and to the entry of a decree of dissolution of said American Guaranty

Company of Chicago, and to the appointment of a receiver to take charge of and administer its assets, and to the entry of such other orders and decrees and to the awarding of such injunctions in the case as equity and justice may require.

(Signed) American Guaranty Company of Chicago.

By Frederick M. Steele, President.

Angus W. McDonald, Sol. for American Guaranty Company."

Attest:

L. W. Pitcher,

(Seal.) Sec'y.

Rec. p. 29.

That at the same instant then and there appeared Lewis W. Pitcher and James L. Bigelow and filed the following joinder:

"(Title.) Lewis W. Pitcher and James L. Bigelow join as complainants in the above and foregoing bill of complaint and request that the prayer thereof be granted.

(Signed) Lewis W. Pitcher.
James L. Bigelow.

By Hal C. Bangs,
Their Attorney." Rec. p. 29.

And thereupon and at once a decree of dissolution was duly made and entered by such Court, by which it was thereby:

"Ordered, adjudged and decreed that the said American Guaranty Company, be, and it hereby is dissolved, and V. L. Black of Charleston, West Virginia, is hereby *appointed receiver*

of all and singular the property and assets of the American Guaranty Company of every description within the jurisdiction of this court, to have and to hold and to administer the same under the order and direction of this court. All the creditors of said American Guaranty Company are hereby enjoined from interfering or meddling with any of the property of said American Guaranty Company. The receiver is hereby directed to take all and such steps as may be necessary to secure possession of the property of the American Guaranty Company within the jurisdiction of this Court and to apply to this Court for any and such further directions as to him may seem necessary."

"But before entering upon the discharge of his duties in this behalf said receiver shall give bond with approved security before the clerk of this court in the penalty of $5,000 conditioned according to law." Rec. p. 53.

That such bond then and there already prepared was at once submitted to such Court, approved and filed.

ACTION IN UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS. Rec. pp. 1-8; 239-246.

On February 2, 1909, the same Carrie Rebecca Furey as such executrix of said last will and testament of Charles La Tour Furey, deceased, and in her own right, and said Carline La Tour Furey, complainants, filed a bill in the United States Circuit Court, Northern District of Illinois, against American Guaranty Company of Chicago (such dissolved corporation) defendant.

That in such bill it was alleged as ground of jurisdiction of such Federal Court:

"That at the time of the death of said Charles La Tour Furey, and for many years continuously theretofore and continuously since, your orators were, have been and now are citizens of said State of Illinois, and residents of said city of Chicago; that said American Guaranty Company of Chicago, is a corporation duly organized and doing business under and by virtue of the laws of the State of West Virginia, and is not incorporated under the laws of any other state, territory or country; that it is a citizen of the State of West Virginia and of no other state, territory or country; that it has heretofore duly complied with the laws of the State of Illinois governing foreign corporations and is duly licensed and authorized to do business in said State; that the matters in dispute in this cause exceed, exclusive of interest and costs, the sum or value of two thousand dollars." Rec. p. 2.

The balance of such bill was substantially the same as the bill filed in West Virginia except the following:

"5. That on or about March 10, 1906, said Guaranty Company duly entered into a contract with said Charles La Tour Furey, under and by the terms of which said Guaranty Company agreed to pay him certain commissions as compensation for services to be rendered by him to said Guaranty Company, which services were by him duly rendered and performed; that under and by the terms of said contract said Guaranty Company became and now is indebted to said Carrie Rebecca Furey, as executrix as aforesaid, in the sum of $14,798.42, which sum is now due and owing by said Guaranty Company to said executrix as such, for such services." Rec. p. 3.

"11. That on February 1, 1909, in accordance with the statutes of the state of West Vir-

ginia authorizing the same, a bill in chancery was filed in the Circuit Court of Kanawha County, West Virginia, in which the principal office or place of business of said Guaranty Company is situated, praying that the court decree a dissolution of said Guaranty Company and to make such other orders and decrees as justice and equity may require, and in said bill, so filed, said Pitcher and Bigelow duly intervened and joined as plaintiffs, and joined in the allegations and prayer of said bill; that said Guaranty Company duly entered its appearance to said bill; that on said February 1, 1909, said Circuit Court of Kanawha County, having full jurisdiction of all of the parties to and subject-matter of said bill, duly entered a decree dissolving said American Guaranty Company of Chicago, which decree is now in full force and effect, unmodified, unreversed and unappealed from; and also appointed a receiver, who has duly qualified as such, of all of said Guaranty Company's assets and effects located within said State of West Virginia; that a true copy of said proceedings in said Circuit Court of Kanawha County is herewith brought into court.

"12. That in consequence of the entry of said decree of dissolution, said American Guaranty Company of Chicago has become a trustee, for its creditors and stockholders, of all of its property, assets and effects; that the receiver so as aforesaid appointed by said Circuit Court of Kanawha County has no jurisdiction outside of the State of West Virginia and has no authority or power outside of said State of West Virginia to collect or enforce collection of all or any of said property, assets and effects; that all of said property, assets and effects, as hereinbefore stated, except some nominal amounts held by some few banks in the progress of collection are located within said

city of Chicago and within the jurisdiction of this court; that it is necessary to ascertain what, if anything is owing to any and all of said 6,500 contract-holders, anything in said fund so on deposit with said Royal Trust Company of Chicago shall be alloted or apportioned on any and all of said contracts; that the surrender value of said contracts is at least $1,000,000, and that some of the holders of said contracts threaten as your orators are informed and believe and state the fact to be that they will commence suits by attachment or otherwise against said Guaranty Company and levy upon its said property, assets and effects so situated in said State of Illinois, and that by means of such attachments, priorities will be secured by some of the contract holders over others; that interminable, complicated and costly litigation will ensue and the property, assets and effects of said Guaranty Company will be wasted and destroyed to such a degree as to make the same utterly inadequate and insufficient, unless such property, assets and effects are taken possession of by a receiver to be appointed by this court to conserve and distribute the estate of said Guaranty Company among those entitled thereto.

"13. That your orators file this, their bill of complaint, not only on behalf of themselves but also on behalf of all other stockholders of said Guaranty Company, and of all other creditors thereof who may ask and secure leave to intervene herein and become parties hereto.

In Consideration Whereof and for as much as your orators are remediless in the premises at or by the strict rules of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable, etc." Rec. pp. 6, 7.

Then follows the general prayer for accounting and the appointment of a chancery receiver to take

charge of all the property, assets and effects of every description of said defendant, etc.

That at the same time there was filed in said court the following:

"In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof.

Carrie Rebecca Furey, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

American Guaranty Company of Chicago, Defendant.

Now comes said American Guaranty Company of Chicago, and confesses each and all of the allegations contained in the bill of complaint filed herein to be true, and that said complainants are entitled to the relief therein prayed, and consents to the appointment forthwith by this Honorable Court of a receiver of all the property, assets and effects of every description of said American Guaranty Company of Chicago, and to the entry of such further orders and decrees from time to time in the premises as the court may deem proper.

American Guaranty Company
of Chicago,

By Frederick M. Steele,
President.

American Guaranty Company
of Chicago,

By Gorham & Wales,

(Corporate Seal.) Its Solicitors.

Attest: L. W. Pitcher, Sec'y."

Rec. pp. 253, 254, 56.

And at the same time there was filed in such court the following:

"In the Circuit Court of the United States in and for the Northern District of Illinois, East-end Division thereof.

Carrie Rebecca Furey, as Executrix of the Last Will and Testament of Charles La Tour Furey, Deceased, and in Her Own Right, and Caroline La Tour Furey, Complainants,

vs.

American Guaranty Company of Chicago, Defendant.

Now come Lewis W. Pitcher and James L. Bigelow, the owners respectively of two hundred and sixty (260) shares and one hundred (100) shares of the capital stock of said American Guaranty Company of Chicago, as alleged in the bill of complaint herein, and consent to said Honorable Court granting the relief prayed for in said bill, and to the appointment forthwith of a receiver of all the property, assets and effects of every description of said American Guaranty Company of Chicago.

Lewis W. Pitcher,
James L. Bigelow."

Rec. p. 254

That at the same instant there was then and there duly made and entered the order appointing

Edwin A. Potter "receiver of this Court of all and singular the property of said American Guaranty Company of Chicago of every description and of all moneys, claims, in action, credits, bonds, stocks and other assets of every kind and of all other property, real, personal and mixed, held or possessed by said Company, or to which said Company is entitled, or in which it has any interest, to have and to hold the same as an offi-

cer of and under the orders and directions of this Court. * * And the said American Guaranty Company of Chicago, and its officers are hereby directed immediately to execute and deliver to the said receiver a deed or deeds of all real estate now owned or possessed by said Company, and transfers and assignments of all the property, assets and effects of said Company."

And it was further provided in said order:

"Said receiver is hereby required to file with the clerk of the court a proper bond in the penal sum of $50,000 with the Empire State Surety Company of New York as surety, and said receiver now here appears in open court and accepts his said appointment as receiver herein, and now here presents said bond in the penal sum of $50,000 with said surety, which said bond the court now here finds to be proper in form and to have been properly executed, and now here approves the same." Rec. pp. 57, 58, 254-256.

That on the 6th day of February, 1909, a notice was given to Levy Mayer, Esq., solicitor for receiver of American Guaranty Company etc. of a motion to be made before United States Circuit Judge appointing such receiver, for leave for the Contract-holders Committee to intervene in such action in the Federal Court as one of the defendants, which notice was signed by Gorham & Wales, solicitors for etc. Rec. p. 60.

That on the 8th day of February, 1909, there was filed a petition by the Contract-holders Committee for leave to intervene and to be made parties in such suit in United States Circuit Court, which petition was signed by Gorham & Wales, their solicitors. Rec. p. 59.

And on such 8th day of February, 1909, leave was given to said Contract-holders Committee to intervene in such action. Rec. p. 61.

That on the 26th day of March, 1909, Edwin A. Potter as such receiver filed his report in said United States Circuit Court. Rec. pp. 167-171.

That from such report it appears that said Guaranty Company is and was largely insolvent. Rec. p. 170.

INTERVENING PETITION OF GILLIAM. Rec. p. 183.

That on the 22nd day of September A. D. 1909, in the Circuit Court of Kanawha County, West Virginia, leave being granted, the petition of W. R. Gilliam on behalf of himself and other contract-holders and creditors of the American Guaranty Company was filed in the case of Carrie Rebecca Furey, executrix, et al. against the American Guaranty Company pending in said court. Rec. pp. 183-208.

That said petition alleges: "The incorporation of said Guaranty Company, its capital stock and the owners thereof, the place of its principal, and, its administrative offices, as alleged in such bill in Kanawha County Circuit Court, and, further alleged that said Gilliam was the owner of five contracts issued by said Guaranty Company not matured, of the aggregate maturity value of $12,500; that he represented 86 other contract-holders who held contracts of the aggregate amount maturity value of more than $450,000.

"That said petitioner is also a creditor of said defendant corporation in the sum and amount of $49,682 because of his right and interest in renewal commissions agreed to be paid to him by said American Guaranty Company as therein set forth. That said renewal commissions arise out of 1508 outstanding contracts then in force held by that many contract holders in the state of Minnesota of maturity value of $3,846,000 which were secured for such Guaranty Company by said Gilliam while acting as agent in the state of Minnesota. That is, nearly one-fourth of all the outstanding contracts aggregating about one-fourth of the entire maturity value of all outstanding contracts were secured, by said W. R. Gilliam, in the state of Minnesota.

That during several years previously and at the time of the dissolution of such American Guaranty Company, the said Lewis W. Pitcher and James L. Bigelow (and Charles La Tour Furey until his death), Frederick M. Steele, William George, William B. Hill, Byron M. Fellows, Frank Backus and John T. Powers constituted the Board of Directors of said American Guaranty Company; only three of whom, including such Furey, deceased, were stockholders in said American Guaranty Company of Chicago.

And, then alleges the filing of the bill in said Kanawha Circuit Court by said Carrie Rebecca Furey, as executrix etc. et al. and all the proceedings in such court up to the time of the appointment of receiver Black and his qualification, and, also alleges the proceedings in the United States Circuit Court in Chicago and the appointment of the receiver in such court, and then alleges the following:

"That by said decree of dissolution, the said defendant corporation has ceased to exist as such and does not continue for the purpose of winding up its affairs, nor are its present officers competent to act in any way, for or on its behalf, nor is it capable of suing or being sued, for the reasons that the appointment of such receiver under the laws of this state, displaces and annuls the powers of said corporation and its officers in toto, and subjects all its acts and powers to the discretion alone of this Honorable Court." Rec. pp. 191, 192.

And then suggests in such petition, the reasons why the said V. L. Black under the rules of said court in West Virginia, ought not to be receiver, prays for his removal and the appointment of another receiver with enlarged powers. Rec. pp. 179-208.

And thereupon on said date the Circuit Court of Kanawha County by its order and decree removed said V. L. Black as such receiver and appointed in his place and stead Edwin M. Keatley. Rec. pp. 179-182.

In such order and decree is the following:

"It is, therefore, adjudged, ordered and decreed that V. L. Black, who was, by a decree entered in this cause on the first day of February, 1909, appointed Receiver of the defendant, American Guaranty Company, be, and he is hereby discharged as such Receiver, and that Edwin M. Keatley is hereby appointed Receiver of the said American Guaranty Company to take custody, possession and control of all and singular the property and assets of the said American Guaranty Company wherever the same may be situated or located, whether in this state or in some other state or territory, and hold the same subject to the provisions of the statutes of West Virginia, under the orders of this Court, and to

the payment of the liabilities of the corporation and the expenses of winding up its affairs, and the surplus, if any, to distribute among the stockholders of the said American Guaranty Company according to their respective interests as the Court may hereafter direct; and the said Receiver is hereby given power and authority to institute and prosecute to final judgment and decree any and all needful actions at law, suits in equity or other proceedings which may be necessary to bring under his jurisdiction and bring into his possession, custody and control any of said property and assets wherever the same may be found; and,

He shall have further power and authority to file any proper petition, demurrer, answer or other pleading, or make such motions as may be necessary in any suit now pending in any state or territory or which may hereafter be instituted in any state or territory, concerning the business, property or assets of said American Guaranty Company, for the purpose of bringing under his possession, control and custody all of the said property and assets and to this end and for the purpose of instituting any such suits or actions for filing any such pleadings and the making of any such motions or interventions, the said Receiver is authorized to employ counsel in this state or in any other state or territory in which any of such property may be situated, if the title and claim of the said Receiver thereto shall be in any way contested or obstructed, and he shall from time to time, report his proceedings hereunder, to the Court; and

The defendant, American Guaranty Company, under the provisions of Section 59 of Chapter 53 of the Code of West Virginia, is hereby ordered and directed to make, execute and deliver an apt and proper deed, conveyance, transfer or assignment conveying to the said Receiver this

day appointed, all of the property and assets of said American Guaranty Company, wherever the same may be situate."

"But before taking any property or assets into his possession or control under this decree, or acting hereunder, the said Receiver shall execute a bond in the penalty of Two Hundred and Fifty Thousand Dollars, with security to be approved by this Court, conditioned that the said Receiver will faithfully discharge his duties as such Receiver and will faithfully account for and pay over all property and assets which may come into his hands as such Receiver." Rec. p. 181.

"In the event that the American Guaranty Company shall fail to file with the papers in this cause, within fifteen days (15) from this date, an apt and proper deed, conveyance, transfer or assignment, conveying to the Receiver this day appointed, all of the property and assets of said American Guaranty Company, wherever the same may be situated, then that T. S. Clark, who is hereby appointed a special commissioner for that purpose, shall make, execute, acknowledge and deliver for record for and on behalf of the said American Guaranty Company, an apt and proper deed, conveyance, transfer or assignment, conveying to the said Receiver this day appointed, all of the property and assets of said American Guaranty Company, wherever the same may be situated, but before making any such deed said special commissioner shall submit the same to the Court for approval, after giving local counsel for plaintiffs reasonable notice thereof." Rec. p. 182.

That the said Edwin M. Keatley duly appeared on the 27th day of September and duly filed his bond for $250,000 in the Circuit Court of Kanawha County, which bond was acknowledged before and approved by the said S. C. Burdett, Judge of said court on such date

DEED TO EDWIN M. KEATLEY.

That on the 9th day of October A. D. 1909, the said T. S. Clark, special Commissioner, made a deed and assignment of all the property and assets real and personal of the said American Guaranty Company of Chicago to Edwin M. Keatley. Rec. p. 136.

INTERVENING PETITION OF KEATLEY.

That on the 27th day of October, A. D. 1909, the said Edwin M. Keatley as such receiver, presented his special intervening petition to the United States Circuit Court of Northern District of Illinois and asked leave to intervene in said action so commenced by Carrie Rebecca Furey as executrix et al. versus American Guaranty Company of Chicago. And, on such date the following order was made and entered in such Court:

> "Carrie Rebecca Furey, Executrix of the Last Will and Testament of Charles L Tour Furey, Deceased, et al.,
>
> vs.
>
> American Guaranty Company of Chicago.
>
> Now come the parties by their solicitors and now comes on to be heard the motion of Edwin M. Keatley, the receiver of the American Guaranty Company of Chicago heretofore appointed by the Circuit Court of Kanawha County, West Virginia, for leave to file his intervening petition herein, and the court after hearing the arguments of counsel and being fully advised in in the premises, sustains said motion.
>
> It is thereupon ordered that leave be, and the same is hereby given said receiver to file his intervening petition instanter, and leave is given

respondents to file their respective answers instanter, and it is further ordered that the replication to said answers be filed within five days from this date.

And thereupon said intervening petitioner is given one week in which to file his brief upon the question of jurisdiction; the respondents to file their briefs within one week thereafter, and the said intervenor has three days thereafter to reply. Rec. p. 215.

INTERVENING PETITION OF EDWIN M. KEATLEY. R. pp. 135-214.

"In the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof. In Equity. No. 29336.
Carrie Rebecca Furey et al., Complainants,

vs.

American Guaranty Company of Chicago, Defendant.

"Petition of Edwin M. Keatley, of Charleston, West Virginia, for leave to intervene specially in said action, as receiver of said defendant corporation appointed by the Circuit Court of Kanawha County, West Virginia.

To the Honorable, the Judges of the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division Thereof:

Your petitioner, Edwin M. Keatley, respectfully represents to your Honors and alleges:

First: That your petitioner is, and for more than ten years last past, has been a citizen and resident of the State of West Virginia, and that the above named complainants are, as pe-

titioner is informed and believes, and for several years last past have been citizens and residents of the State of Illinois.

That the above named defendant, American Guaranty Company of Chicago, was prior to the first day of February, A. D. 1909, a corporation organized, created and existing under the laws of the State of West Virginia, with its principal office in the City of Charleston, Kanawha County, in the State of West Virginia, and its administrative offices in the City of Chicago, State of Illinois, and was a citizen and resident of the said State of West Virginia." Rec. pp. 128, 129.

That thereafter said petitioner alleges; the proceedings in the Circuit Court of Kanawha County, from the filing of the bill to the appointment of V. L. Black, as such receiver, giving the substance of what the said bill contains. And further, alleges the proceedings in the United States Circuit Court of Chicago up to and including the appointment of Edwin A. Potter, receiver.

And thereafter in such petition he alleges the appearance in said Circuit Court of Kanawha County of W. R. Gilliam, the filing of his petition, the substance thereof and all proceedings thereunder to the removal of receiver Black and the appointment of Keatley, the giving of his bond and the execution of the deed by Commissioner Clark, and the approval of such deed by the Circuit Court of Kanawha County, and continuing such petitioner alleges:

"Third. And your petitioner further shows that he is advised by counsel and therefore alleges that the judgment and decree of said Circuit Court for Kanawha County, West Virginia, dissolving and declaring at an end the incorpo-

ration of said American Guaranty Company of Chicago as a corporation under the laws of said state, so as aforesaid made and entered on said 1st day of February, A. D. 1909, was fully authorized by the provisions of sections 57 and 58 of Cahpter 53 of the Code of West Virginia, and forever ended and determined the corporate existence of said defendant company and deprived it absolutely and entirely of any power or authority to act in any manner whatsoever as a corporation thereafter, and forever ended the authority of its officers to act for or in its behalf, except as expressly provided by section 59 of Chapter 53 of the Code of said State of West Virginia, whereby, under the circumstances therein set out, officers of such corporation are permitted to act for a limited time so far only as may be necessary in winding up the affairs of the corporation, and that, as in the said case in said Kanawha Circuit Court, where a receiver of the said dissolved corporation is appointed for the purpose of winding up the corporate business and affairs, the officers of said corporation are absolutely deprived of all authority to act, except as directed by the said court, or requested by the said receiver. And said section 59 further provides that the property and assets of the corporation shall, under the order and direction of the receiver appointed by such Circuit Court for the purpose, as is mentioned in the 57th section of said chapter 53 of the Code of West Virginia, be subjected to the payment of the liabilities of the corporation and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests.

That, therefore, the said dissolution of said American Guaranty Company of Chicago, by said decree of said Circuit Court of Kanawha County, West Virginia, so made and entered on the 1st day of February, 1909, and the appointment of

said Black as such receiver, in and of itself, without the restraining order, also then and there issued, took from said corporation and its Board of Directors, and all its officers, every power, franchise, right, and authority to appear for said corporation in this Honorable Court and submit to the jurisdiction thereof in this pending action, or to give to this Honorable Court jurisdiction herein, either over the person of said defendant company or the subject matter of winding up its affairs by and through its own receiver apointed in this cause upon said 2nd day of February, A. D. 1909.

"That the said defendant corporation upon dissolution as hereinbefore mentioned, under the laws of West Virginia, the state of the creation of said defendant, could only finish its business, conserve and marshal its assets, pay and discharge its lawful indebtedness, and distribute and dispose of its surplus funds, if any, by and through the direction, orders, judgments and decrees of said Circurit Court of Kanawha County, West Virginia, and that any attempt so to do, or any interference with the property, business, or assets of said defendant corporation, by any other court wherever situate, except ancillary to and upon the request and authority of said court of original jurisdiction, would be wholly unwarranted and without competent jurisdiction, and all the acts, orders, directions, judgments and decrees of such other court, and all its proceedings would in that respect be *coram non judice* and without right.

"And you petitioner further shows, that he is advised by counsel and therefore alleges, that the pretended voluntary appearance in this Honorable Court and in this cause by said defendant American Guaranty Company of Chicago on said second day of February, A. D. 1909, by and through its attorneys Gorham & Wales, and its voluntary answer to said bill, and its consent to

the appointment of receiver herein, when said corporation had been by the same parties, or in the same interests procured to be declared dissolved, and a receiver therefor so appointed in said state of West Virginia, on said 1st day of February, A. D. 1909, gave to this Honorable Court no jurisdiction whatever, but was in fact a fraud upon this Honorable Court, and all proceedings subsequently taken herein are without right, and in truth and in law and fact, null and void.

"That by virtue of the order so made by said Circuit Court of Kanawha County, West Virginia, appointing your petitioner receiver of said Court for the property and assets of said defendant American Guaranty Company of Chicago, it becomes the duty of your petitioner to ask permission of this Honorable Court to intervene specially in this action, not acknowledging, but on the contrary, protesting the jurisdiction of this Honorable Court in the premises, and to ask that this Honorable Court permit to be filed herein, this petition for the purpose aforesaid, to the end that after proper answer the issues framed may be heard in this Honorable Court and finally determined, and that the order and decree of this Honorable Court be made and entered, as the rules of equity shall rquire.

And your petitioner will ever pray, etc.

Edwin M. Keatley,
Petitioner.

By F. W. Houghton,
His Attorney.

Thos. H. Gill, F. W. Houghton, George B. Edgerton, Chilton, MacCorkle & Chilton, Sol's." Rec. pp. 133-135.

(Such petition was duly verified.)

PRETENDED ANSWER OF AMERICAN GUARANTY COMPANY TO PETITION OF EDWIN M. KEATLEY. Rec. 216-226. Exhibits pp. 226-278.

That Edwin A. Potter and the Contract-holders Committee each adopted the pretended answer of the American Guaranty Company of Chicago. Rec. p. 279.

That such adopted answer of Edwin A. Potter, as receiver, and Contract-holders' Committee, to the petition of Keatley, after certain recitals, admissions and denials, alleges: "The resolution adopted by the members of the executive committee on January 30, 1909, by virtue of which Gorham & Wales appeared in behalf of said defunct and dissolved American Guaranty Company of Chicago on February 2, 1909, in the United States Circuit Court. Rec. p. 218.

That in such answer to petition of Keatley so adopted by said Edwin A. Potter, receiver, and Contract-holders' Committee is the following:

> "That under and in accordance with the statutes of the state of West Virginia in such case made and provided, suits may be brought, continued or defended, and all lawful acts done in the corporate name in like manner or like effect as before the dissolution of said corporation so far as shall be necessary or proper for collecting the debts and claims due the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto; that the bill filed herein is for the purpose of collecting debts and claims due to this defendant, and for converting its property and assets into money and

for protecting and prosecuting its rights and enforcing its liabilities and paying over and distributing its properties and assets and the proceeds thereof to those entitled thereto, and that under and in accordance with said statutes of West Virginia, the bill herein against this defendant may be defended in the corporate name, and that for the purpose of defending the suit herein and carrying out the orders of this court, this defendant continues in existence as a corporation for the purposes mentioned; and notwithstanding the decree of dissolution heretofore entered in the Circuit Court of Kanawha County, West Virginia, on the 1st day of February, 1909, this defendant under the statutes of West Virginia, and under the law and practice of this court, continues in existence as a corporation of the state of West Virginia, and is a citizen of said state of West Virginia, for the purpose of defending the suit herein and for the collection and distribution of its assets among those entitled thereto under and in accordance with the orders of this court, and as such continues and is a resident of the state of West Virginia and of no other state whatsoever." Rec. pp. 219, 220.

And such answer contains the following allegations:

"3. This defendant admits that the judgment and decree of said Circuit Court of Kanawha County, West Virginia, entered on February 1, 1909, decreeing the dissolution of this defendant was fully authorized by the statutes of West Virginia; but this defendant denies that the said decree of dissolution in accordance with the statutes of West Virginia, deprives it absolutely and entirely of any power or authority to act in any manner as a corporation thereafter, but on the contrary asserts and alleges that under and in accordance with the statutes of the

state of West Virginia herein above referred to and the law, this defendant maintained an existence for certain purposes, and could defend suits and do all lawful acts under the corporate seal and in its corporate name for the purpose of collecting debts and claims due to it, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities and paying over and distributing its properties and assets and the proceeds thereof to those entitled thereto, and also for other purposes.

"And this defendant denies that the appointment of V. L. Black as receiver of the assets of this defendant by order of said Circuit Court of Kanawha County, entered on February 1, 1909, in any way deprived said corporation or its officers to act or to defend suits brought against it in its corporate name, and this defendant denies that the appointment of said Black as such receiver, took from this defendant and its Board of Directors and its officers, every power, franchise, right and authority to appear for said corporation in this Honorable Court, and to submit to the jurisdiction thereof in this pending action or to give this Honorable Court jurisdiction herein over the person of this defendant, or the subject-matter and winding up its affairs by and through the receiver appointed herein, but on the contrary this defendant expressly alleges and asserts under and in accordance with the provisions of the statutes of West Virginia in such case made and provided and the law, this defendant was authorized to appear under its corporate name and defend the proceedings herein instituted, and to consent thereto, and further that under and in accordance with the resolution duly adopted by its executive committee prior to the decree of dissolution entered in said Circuit Court of Kanawha County, this defendant duly authorized and directed its attorneys here-

in to appear for it and on its behalf, and to consent to the relief prayed in the bill filed herein, to take such other and further steps, acts and proceedings as to them might seem proper."

"And this defendant further denies that the taking of the jurisdiction by this Honorable Court and the appointing of the receiver herein, and the taking possession of the property and assets of this defendant by this Honorable Court was unwarranted and without jurisdiction, and on the contrary this defendant asserts and alleges that the acts and proceedings of this Honorable Court were with full jurisdiction of all the parties hereto, and the subject matter thereof, and that all the proceedings and acts taken in this Honorable Court have been with full jurisdiction in the premises, and this defendant denies that the appearance by this defendant in this Honorable Court by Gorham & Wales, its solicitors, was a fraud upon this Honorable Court, and that all proceedings subsequently taken herein are null and void, but on the contrary expressly asserts and alleges that this defendant with full authority directed the entry of its appearance herein and appeared herein and consented to the relief herein prayed, and that such appearance and consent were duly authorized both by resolution of its executive committee adopted prior to the decree of dissolution herein, and by the statutes of the state of West Virginia, authorizing dissolved corporations to prosecute and defend suits seeking relief similar to that sought herein in the corporate name. And this defendant denies that said Edwin M. Keatley is entitled to any relief whatsoever as in and by his said petition prayed." Rec. pp. 222, 223.

That on the 7th day of February, 1910, United States Circuit Court made and entered the following decree:

"Decree of February 7, 1910, Dismissing Intervening Petition of Edwin M. Keatley.—29336.

Carrie Rebecca Furey et al.

vs.

American Guaranty Company of Chicago.

"There having heretofore come on to be heard the intervening petition heretofore filed herein by Edwin M. Keatley, of Charleston, West Virginia, claiming to have been appointed receiver of said American Guaranty Company of Chicago, by the Circuit Court of Kanawha County, West Virginia, and the exhibits attached to said intervening petition; also the answers and exhibits thereto heretofore filed herein to said intervening petition by said American Guaranty Company of Chicago, by Edwin A. Potter, heretofore appointed herein receiver of said American Guaranty Company of Chicago, by A. E. Cross, Joseph F. Leaming, L. K. Torbet and A. E. Taylor, constituting the Contract-holders' Committee of said American Guaranty Company of Chicago, and by said Carrie Rebecca Furey and Caroline La Tour Furey, complainants herein; and there having heretofore also come on to be heard at the same time the motion of said intervening petitioner, orally made in open court, for an order herein to direct said Edwin A. Potter Receiver herein, to turn over the property, assets and effects of said American Guaranty Company of Chicago, in the possession, custody and control of said Edwin A. Potter, Receiver, to said intervening petitioner, Edwin M. Keatley; and the court having heretofore heard the respective arguments of Messrs. Thomas H. Gill, F. W. Houghton, George B. Edgerton and Chilton, McCorckle & Chilton, solicitors and of counsel for said intervening petitioner, and of Levy Mayer, Esq., solicitor and of counsel for said Edwin A. Potter, Receiver herein and the court having

heretofore taken all of said matters under advisement and now having duly considered the same, and being fully advised in the premises; Finds: That it has jurisdiction in the premises,

"That there is no equity in said intervening petition or in said motion, and that said intervening petitioner, Edwin M. Keatley, is not entitled to any of the relief prayed for in said intervening petition or in said motion.

"Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said intervening petition and the said motion, and each of them, shall be and the same are hereby overruled and denied and the said intervening petition is hereby ordered to be and the same is hereby dismissed." Rec. pp. 286, 287.

That the written opinion of the Honorable Christian C. Kohlsaat rendered prior to the signing of such decree, Rec. pp. 280-286, among other things contains the following:

Carrie Rebecca Furey, as Executrix,et al.

vs.

American Guaranty Company of Chicago.
Kohlsaat, J.:

"This cause is before the court upon the intervening petition of Edwin M. Keatley, as receiver appointed by the Circuit Court of Kanawha County, West Virginia, on September 22, 1909, setting up want of jurisdiction in this court, and asking that the further administration of the cause be relegated to said Kanawha County Circuit Court, and that the assets now held by the receiver of this court be turned over to said Keatley as such West Virginia receiver." Rec. pp. 280, 281.

He also says in such opinion:

"The contention is that the decree of the Kanawha County Circuit Court dissolving the corporation, so far ended its life as to deprive it of power to enter its appearance and consent to the appointment of a receiver in this Court, that this suit and the proceedings thereunder are void, while at the same time it is insisted that the original receiver became *de jure* receiver of and entitled to reduce to possession all of the assets of said corporation, including those now held by the receiver of this court, by virtue of said decree of February 1, 1909, notwithstanding its terms. * * * Rec. pp. 282.

The opinion then quotes sections 57, 58 and 59 of the Code of West Virginia and shortly after contains the following:

"Does the act of the company in entering its appearance to this suit come within the meaning of the provisions of Sec. 59 just enumerated, and had the corporation the power to enter its appearance herein and consent to the granting of the relief prayed? Was the proceeding here a necessary or proper and lawful act done in the corporate name for collecting the debts and claims due to the corporation, conserving its rights, enforcing its liabilities, and paying over and distributing its property to those entitled to it?" Rec. p. 283.

He again says: "Assuming that the proceeding in West Virginia was under the Sections of the statutes of that state above quoted, what was the effect of the order of the Kanawha County Court entered February 1, 1909?

1. Did it deprive the Guaranty Company of all authority to enter its appearance and consent to the granting of the prayer of the bill herein?

2. Did it invest the receiver with any further authority than that expressed therein?" Rec. p. 284.

And, again, "It is the assumption of the counsel for the intervening petitioner that when the first West Virginia Receiver was appointed the corporation died and could not be heard to assert its existence by doing any act in a foreign jurisdiction. The Law, however, is as stated by Thompson on Corporations, Sec. 7370, viz: 'After a corporation becomes dissolved, it can neither sue nor be sued, unless the faculty of suing or being sued is prolonged by statute for the purpose of winding up its affairs.'

"The order of the court dissolving the corporation was based upon the statute in that case provided, as otherwise the court might not take jurisdiction to that end; but applying the rule above cited from Thompson on Corporations, does the case come within the doctrine asserted by petitioners, viz., that a dissolved corporation is a corpse? Does not the statute prolong the faculty of suing or being sued for the purpose of winding up its affairs, and is not the present suit a proceeding for that purpose?" Rec. p. 284.

On Rec. p. 286 the Honorable Judge Kohlsaat continuing said:

"So I am constrained, under the circumstances, to hold that at the date of the institution of this suit, the West Virginia receiver was not vested with control and title to the property in the possession of the receiver herein, but that the same was, at most, held by the corporation in trust for creditors and stockholders; that this court, being a court of equity, has jurisdiction in the premises. The claim that the jurisdiction of this was in any manner affected by the September order of the West Virginia Court does not appeal to me as well founded. * * * I am of the opinion that the prayer of the intervening petitioner should be and it is denied."

On March 5, 1910, the special intervenor Keatley made and presented his petition for appeal to the Honorable Christian C. Kohlsaat together with his assignment of errors, which are as follows:

PETITION FOR APPEAL.

(Title)

"The above named Intervenor, Edwin M. Keatley, conceiving himself aggrieved by the order and decree entered on the 7th day of February, A. D. 1910, in the above entitled proceeding, dismissing his intervening petition herein, based solely upon the ground that this Honorable Court has never obtained jurisdiction of the person of the defendant, American Guaranty Company of Chicago, because of the lack of service of process on said defendant, and because no proper or legal voluntary appearance by said defendant was or could be made herein, doth hereby appeal from said order and decree to the Supreme Court of the United States and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree were made, together with the written opinion of the Honorable Christian C. Kohlsaat, on such question of jurisdiction rendered but not filed herein, duly authenticated, may be sent to the Supreme Court of the United States." Rec. p. 288.

Milwaukee, Wis., March 5, 1910.

(Title).

ASSIGNMENT OF ERRORS.

"And now at the same term, comes Edwin M. Keatley, as receiver, etc., Appellant and makes and files the following as his assignment of errors, to-wit:

1st. The Circuit Court of the United States for the Northern District of Illinois, Eastern Division, erred in taking jurisdiction of and over the person and property of the defendant American Guaranty Company of Chicago, after the decree of dissolution of, and appointment of a receiver for said defendant, entered pursuant to express statute, by a court of competent jurisdiction in the state of defendant's domicile, such jurisdiction of the said Circuit Court of the United States, resting solely upon a pretended appearance by attorneys for said defendant, appointed as such before said dissolution, and a similar pretended voluntary appearance by the former President and Secretary of said defendant corporation.

2nd. That said Circuit Court of the United States erred in making and entering its order and decree herein, dated February 7th, 1910, denying and dismissing the petition and motion of Edwin M. Keatley as receiver of said defendant corporation appointed by the said State Court, for right to intervene and have and receive as such officer, the property and assets of said defendant corporation now in possession of said Circuit Court of the United States." Rec. p. 289.

On May 6, 1910, the said Honorable Christian C. Kohlsaat directed the clerk to file such petition for appeal and such assignment of errors and drew up himself or had prepared for him, an order allowing appeal, which is as follows:

"Carrie Rebecca Furey et al.
vs.
American Guaranty Company of Chicago.

"Now comes Edwin M. Keatley, by his solicitors, and presents his petition for appeal and assignment of errors, praying an appeal to the United States Supreme Court from the order

and decree entered herein on February 7, 1910. This court is of the opinion that no question of jurisdiction is involved in said order and decree, but allows said appeal without certifying to any jurisdictional question, upon the said Keatley filing an appeal bond in the sum of Five Hundred Dollars ($500) with surety to be approved by the court." Rec. p. 290.

And thereafter and on May 23, 1910, the said petitioner presented his bond which was approved by the Court and filed on the same date.

PECULIAR FACTS.

A fair inference from such bill filed in West Virginia is, that said American Guaranty Company was solvent, in a prosperous condition and for several years had been growing rapidly in business, up to the time of the death of said Furey.

That, inasmuch as two months had elapsed from the death of said Furey before the filing of said bill in Kanawha County Circuit Court, the Board of Directors of such American Guaranty Company of Chicago must have known that the corporation was insolvent at such date, February 1, 1909.

The prayer of the bill in the Kanawha County Circuit Court was:

> "That this Court decree a dissolution of said American Guaranty Company of Chicago * * * and appoint one or more persons to be receivers to take charge of and administer the assets of said company."

The consent answer of the company was:

> "And consents to the granting of the prayer contained in said bill of complaint and to the entry of a decree of dissolution of said American Guaranty Company and to the appointment of a receiver to take charge of and administer its assets."

The other stockholders joined as complainants in such bill, "and requested that the prayer thereof be granted."

That only 962 shares of its capital stock out of the authorized 5,000 shares of such Guaranty Company had ever been issued.

That the Vice-president, Chairman of the Board of Directors and Vice-president owned 602 shares of the 962 shares.

That the 360 shares owned by Pitcher and Bigelow had been for several years held by the corporation as security for loans made to such parties by the corporation.

That at the time of the appointment of V. L. Black, receiver of the property and assets within the jurisdiction of such court, there were in such court and parties to such suit, all the stockholders thereof, and the corporation itself by its proper officers and attorneys.

That $1,300,000 of the property of such corporation was then and there in quick assets, securities, bank deposits and mortgages.

That the domicile of said corporation was Charleston, West Virginia.

That the legal situs of said personal property was at the domicile of said corporation. That all of said personal assets of said corporation was then and there within the jurisdiction of said West Virginia Circuit Court.

That only two of the surviving Board of Directors were stockholders of such corporation.

There is no allegation in the bill filed in the United States Circuit Court Northern District of Illinois, that Gorham & Wales had been previously appointed attorneys for said corporation to appear in such suit.

There was no reference in such bill by allegation or otherwise of section 59 of the Code of West Virginia or any of the provisions of such Code.

That the debt alleged to be due to Charles Furey, deceased, grew out of a contract made between himself as the actual President of the corporation, the chairman of the Board of Directors and the holder of nearly two-thirds of the stock of the corporation and was for commissions upon contracts issued by the corporation which constituted the entire work and business of such corporation.

That the report of the Federal receiver, Potter, made on March 26, 1909, shows the corporation to be largely insolvent.

That no notice whatever was given to the contract holders of the suit brought in West Virginia or in the United States Circuit Court.

That we have here the stockholders of an insolvent corporation without notice to any creditors,

except one of such stockholders who claimed to be a creditor, procuring the dissolution of such corporation and the appointment of a statutory receiver to wind up the affairs of the corporation, and then the appointment in another jurisdiction of another receiver to wind up the affairs of such corporation.

The allegation in the bill in the United States Circuit Court that certain contract-holders threatened suit following so soon the decree of dissolution certainly appears to be only fiction.

It is somewhat irregular that Gorham & Wales, the attorneys alleged to have been specially appointed by a resolution of the executive committee on January 30, 1909, to represent the Guaranty Company in the suit in Federal Court, should, four days after their pretended appearance as solicitors for the American Guaranty Company of Chicago to give the Federal Court jurisdiction, appear as attorneys for the Contract Holders Committee, representing more than 6500 contract holders who were the creditors of this insolvent corporation.

Verily, the *coup d'etat* of the American Guaranty Company of Chicago was completely planned and executed with great dispatch.

CONTENTS OF THE TRANSCRIPT OF RECORD AND EXPLANATION THEREOF.

From page 1 to page 128 of the Transcript of the Record are proceedings in the United States Circuit Court of Northern Illinois, up to the time of the filing of the Intervening Petition of Edwin M. Keatley,

which in any way or manner are material to the issues on this appeal.

This includes the original bill filed in United States Circuit Court which had in the first instance attached to it a certified copy of the entire proceedings had in the Circuit Court of Kanawha County on February 1, 1909.

The Special Intervening Petition of Edwin M. Keatley, with the Exhibits, is found Rec. pp. 128-214 (to folio 397).

This includes the Petition proper. Rec. pp. 128-135, with the Exhibits attached thereto. Rec. pp. 135-214.

The Exhibits are certified copies of all the proceedings in the Circuit Court of Kanawha County, West Virginia, from the filing of the bill in chancery on February 1, 1909, until the appointment of Edwin M. Keatley as receiver.

The petition of Keatley also refers to the Bill filed in the United States Circuit Court and all proceedings had thereunder up to and including the report of the receiver Potter on March 26, 1909.

The Answer of the American Guaranty Company of Chicago to the intervening petition of Keatley is found, Rec. pp. 216-280.

This same answer was adopted by Edwin A. Potter receiver. Rec. p. 279.

This same answer was also adopted by the Contract-holders Committee. Rec. p. 280.

The Notice of Motion of Edwin M. Keatley for leave to file his Intervening Petition in the United

States Circuit Court and the Order granting such leave, are found, Rec. pp. 214, 215.

The written Opinion of Judge Kohlsaat, Rec. pp. 280-286.

The Decree Dismissing the Intervening Petition of Keatley. Rec. pp. 286, 287.

Petition for Appeal and Assignment of Errors, Rec. pp. 288, 289.

Order Allowing Appeal. Rec. p. 290.

BRIEF.

I.

THE MOTION TO DISMISS THE APPEAL SHOULD BE DENIED BECAUSE THE RECORD CLEARLY SHOWS THAT THE SOLE QUESTION DECIDED BY THE COURT BELOW WAS A SINGLE DEFINITE QUESTION OF JURISDICTION, AND IT ALSO CLEARLY APPEARS FROM THE PETITION FOR APPEAL AND THE ORDER GRANTING IT, THAT THIS APPEAL WAS TAKEN TO THE SUPREME COURT TO REVIEW THE QUESTION OF JURISDICTION ALONE AND HENCE IS SUFFICIENT WITHOUT A CERTIFICATE.

Davis v. C. C. C. & St. L. R. Co., 217 U. S. 157.

Re Jefferson, 215 U. S. 130.

Excelsior W. P. Co. v. Pac. Bridge Co., 185 U. S. 282.

Shields v. Coleman, 157 U. S. 168.

Re Lehigh Min. & Mfg. Co., 156 U. S. 322.

Huntington v. Laidley, 176 U. S. 668.

Interior Const. Co. v. Gibney, 160 U. S. 217.

Smith v. McKay, 161 U. S. 355.

II.

THE RECORD CLEARLY SHOWS THAT THE SOLE QUESTION DECIDED BY THE COURT BELOW WAS ONE OF JURISDICTION AND NO CERTIFICATE IS IN SUCH CASE REQUIRED.

Davis v. C. C. C. & St. L. R. Co., 217 U. S. 157.

Re Jefferson, 215 U. S. 130.

United States v. Larkin, 208 U. S. 333, 338.

Chicago v. Mills, 204 U. S. 321.

Petri v. F. E. Creelman Lumber Co., 199 U. S. 487.

Excelsior W. P. Co. v. Pac. Bridge Co., 185 U. S. 282.

Harkrader v. Wadley, 172 U. S. 148.

Re Lehigh Min. Mfg. Co., 156 U. S. 322.

Smith v. McKay, 161 U. S. 355.

Interior C. & I. Co. v. Gibney, 160 U. S. 217.

Shields v. Coleman, 157 U. S. 177.

III.

THE JURISDICTION OF THE CIRCUIT COURT AS A FEDERAL COURT WAS INVOLVED IN THIS CONTROVERSY BECAUSE NO LAWFUL VOLUNTARY GENERAL APPEARANCE BY THE DEFENDANT WAS OR COULD BE MADE THEREIN. AND, BECAUSE OF THE FAILURE TO LAWFULLY SERVE THE DEFENDANT WITH ANY PROCESS.

Davis v. C. C. C. & St. L. Ry. Co., 217 U. S. 157.

Interior Const. & Imp. Co. v. Gibney, 160 U. S. 217.

Shepard v. Adams, 168 U. S. 618.

Kendall v. Amer. Automatic Loom Co., 198 U. S. 477.

Board of Trade v. Hammond, 198 U. S. 424.

IV.

THE ENTIRE CONTROVERSY IN THE COURT BELOW WAS WHETHER OR NOT THE DECREE OF DISSOLUTION OF THE AMERICAN GUARANTY COMPANY OF CHICAGO AND THE APPOINTMENT OF RECEIVER BLACK OF THE ASSETS OF SUCH CORPORATION WITHIN THE JURISDICTION OF SUCH COURT UNDER THE PROVISIONS OF SECTIONS 57, 58 AND 59 OF THE CODE OF WEST VIRGINIA SO ENDED THE LIFE AND POWER OF SUCH CORPORATION AND ITS OFFICERS THAT IT COULD NOT THEREAFTER BY SUCH OFFICERS OR ATTORNEYS ENTER A GENERAL APPEARANCE IN THE UNITED STATES FEDERAL COURT SO AS TO GIVE SUCH COURT JURISDICTION IN SUCH ACTION.

Sections 56, 57, 58, 59 Chapter 53, Code of West Virginia, 3rd Ed., pp. 510, 511.

Alderson on Receivers, pp. 4, 19, 20, 79, 80, 276, 277, 387, 523.

White v. White, 130 Cal. 597.

Clark & Marshall on Private Corp., vol. 2, Sec. 319, pp. 912, 913.

Conklin v. U. S. Shipbuilding Co., 140 Fed. 219.

American Nat'l Bank of Denver v. Nat'l Benefit & Casualty Co. et al. (Wiswall intervener), 70 Fed. 420.

Pendleton v. Russell, 144 U. S. 640, 644, 645.

ARGUMENT.

I.

THE MOTION TO DISMISS THE APPEAL SHOULD BE DENIED BECAUSE THE RECORD CLEARLY SHOWS THAT THE SOLE QUESTION DECIDED BY THE COURT BELOW WAS A SINGLE DEFINITE QUESTION OF JURISDICTION AND IT ALSO CLEARLY APPEARS FROM THE PETITION FOR APPEAL AND THE ORDER GRANTING IT, THAT THIS APPEAL WAS TAKEN TO THE SUPREME COURT TO REVIEW THE QUESTION OF JURISDICTION ALONE AND HENCE IS SUFFICIENT WITHOUT A CERTIFICATE.

The issue which lies at the foundation of the controversy upon this appeal to this Court is a matter of record and so beyond dispute.

It is admitted by both sides that the American Guaranty Company of Chicago, a West Virginia corporation, was duly dissolved by the decree of the Kanawha County Circuit Court of West Virginia, on February 1, 1909, and V. L. Black appointed "receiver of *all and singular the property and assets of the American Guaranty Company of every description, within the jurisdiction of such Court*, to have and to hold and to administer the same under the orders of such Court." Rec. p. 53.

That such decree further provided: "All the creditors of said American Guaranty Company are hereby enjoined from interfering or meddling with any of the property of said American Guaranty Company."

It is also admitted that such decree of dissolution and such appointment of such receiver was the direct result of a suit in chancery brought, in such Kanawha County Circuit Court, by the owners of more than one-third of the capital stock of such Guaranty Company, as complainants, against such American Guaranty Company of Chicago, defendant.

That the prayer in such bill in chancery was,

> "That this court decree a dissolution of said American Guaranty Company of Chicago, and make such orders and decrees and award such injunctions in the cause as justice and equity may require; and appoint one or more persons to be receivers to take charge of and administer the assets of said defendant company, and grant such other and appropriate relief as may be proper in the premises." Rec. p. 28.

That the other stockholders appeared and joined as complainants and filed their written request that the prayer of the complaint be granted. Rec. p. 29.

More, said stockholders stated in writing,

> "That they have heard read the bill and know its allegations and prayer; that the said allegations are true and that the prayer thereof ought to be granted, and they consent to the granting of the same; that the granting of said prayer is to the best interests of said American Guaranty Company of Chicago and to all of its stockholders and creditors,

> and they respectively request that the said court shall grant the decree of dissolution of said American Guaranty Company of Chicago and appoint a receiver to take charge of and administer its assets, and make such other orders and decrees and award such injunctions in the cause as equity and justice may require." Rec. p. 30.

That such American Guaranty Company of Chicago duly appointed and filed its consent answer and made practically the same prayer as the complainants in such bill. Rec. p. 29.

It is also beyond dispute that the proceedings in the Circuit Court of Kanawha County were had under and were authorized by sections 57, 58 and 59 of Chapter 53 of the Code of West Virginia.

There is no dispute as to what the proceedings were in the United States Circuit Court in Chicago.

Such Court grounded its jurisdiction upon the claim of complainants that they were and had been for many years citizens and residents of Chicago, Illinois, and the defendant, the American Guaranty Company of Chicago, was a West Virginia corporation, was and had been for many years a citizen and resident of Charleston, West Virginia, and not of any other state or territory, and that the amount in controversy was in excess of two thousand dollars.

For such United States Circuit Court to obtain jurisdiction of the person of said defendant one of two things was necessary.

1. To duly serve a process upon such defendant, or

2. That such defendant should duly appear in such Court. (Pennoyer v. Neff, 95 U. S. 714, 733.)

There was no service of process.

The former President and Secretary of such dissolved corporation appeared in such United States Circuit Court and Gorham & Wales, as solicitors of such American Guaranty Company, appeared in such Court and filed a consent answer to such bill of complaint. Rec. p. 56.

By such pretended appearance and in no other way, the said United States Circuit Court obtained jurisdiction, if jurisdiction it has, over the person of said American Guaranty Company of Chicago.

The same complainants who brought the suit in West Virginia brought the suit in such United States Circuit Court.

More, in such suit in the United States Circuit Court the complainants brought with them into court and made part of their bill certified copies of all the records and proceedings in the Kanawha County Circuit Court.

Such complainants brought such suit in the United States Circuit Court both as creditors and as stockholders. Such complainants in such bill in the United States Circuit Court prayed for an accounting and the appointment of a chancery receiver. Rec. pp. 7, 8.

As a result of such suit in United States Circuit Court and on the same day an order was made by such United States Circuit Court appointing Edwin A. Potter receiver. Rec. p. 57.

Now it is very evident that whether or not the United States Circuit Court obtained jurisdiction over the person of the American Guaranty Company of Chicago depends entirely upon whether or not the statutes of West Virginia under which such decree of dissolution was granted and such receiver appointed, continued the life of such corporation for such purpose; or, whether by such decree of dissolution and the appointment of such receiver the power of such corporation to so act had been and was forever ended:

> For "when a corporation becomes dissolved in the state or country of its creation, in any mode known to the law of such state or country, it is dissolved everywhere else so that any action pending against it in a judicial tribunal in another state or country will abate upon the fact of its dissolution in the state or country of its domicile being brought to the attention of the court." This is elementary law.
>
> "In the absence of statutory provision to the contrary, a corporation, after it has been legally dissolved, can neither sue or be sued, and all actions or proceedings commenced against it prior to its dissolution are abated."
>
> Mumma v. The Potomac Co., 33 U. S. (8 Pet.) 281.
>
> Selma First Nat'l Bank v. Colby, 21 Wal-Wallace 609.
>
> Pendleton v. Russell, 144 U. S. 645.

After reciting all the proceedings in the Kanawha County Circuit Court up to and including his own appointment, and, also, all the proceedings in the United States Circuit Court of Northern District of

Illinois up to and including the appointment of Edwin A. Potter as receiver, and the filing of his report on March 26, 1909, Edwin M. Keatley as such receiver, in his special intervening petition, alleged; all that is found on record pp. 133, 134, beginning paragraph "Third" on page 133. This has been quoted in full on page ...

All the preceding allegations and averments in such petition are duly established by the exemplified copies of the records of Kanawha County Circuit Court attached to such petition and by the record of said United States Circuit Court. So that the only allegations or averments which are denied are found in such petition after such paragraph "Third," on page 133 of the Record.

It is there alleged in such petition:

> "That petitioner is advised by counsel and therefore alleges, that the judgment and decree of said Circuit Court for Kanawha County, West Virginia, dissolving and declaring at an end the incorporation of said American Guaranty Company of Chicago as a corporation under the laws of said state, so as aforesaid made and entered on said 1st day of February, A. D. 1909, was fully authorized by the provisions of sections 57 and 58 of Chap. 53 of the Code of West Virginia, and forever ended and determined the corporate existence of said defendant company and deprived it absolutely and entirely of any power or authority to act in any manner whatsoever as a corporation thereafter, and forever ended the authority of its officers to act for or in its behalf, except as expressly provided by section 59 of Chapter 53 of the Code of said State of West Virginia, whereby under the circumstances therein set out, officers of such corporation are

permitted to act for a limited time so far only as may be necessary in winding up the affairs of the corporation, and that, as in the said case in said Kanawha Circuit Court, where a receiver of the said dissolved corporation is appointed for the purpose of winding up the corporate business and affairs, the officers of said corporation are absolutely deprived of all authority to act, except as directed by the said court, or requested by the said receiver. And said section 59 further provides that the property and assets of the corporation shall, under the order and direction of the receiver appointed by such Circuit Court for the purpose, as is mentioned in the 57th section of said Chapter 53 of the Code of West Virginia, be subjected to the payment of the liabilities of the corporation and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests."

"That, therefore, the said dissolution of said American Guaranty Company of Chicago, by said decree of said Circuit Court of Kanawha County, West Virginia, so made and entered on the 1st day of February, 1909, and the appointment of said Black as such receiver, in and of itself, without the restraining order, also then and there issued, took from said corporation and its Board of Directors, and all its officers, every power, franchise, right and authority to appear for said corporation in this Honorable Court and submit to the jurisdiction thereof in this pending action, or to give to this Honorable Court jurisdiction herein, either over the person of said defendant company or the subject matter of winding up its affairs by and through its own receiver appointed in this cause upon the said 2nd day of February, A. D. 1909."

"That the said defendant corporation upon dissolution as hereinbefore mentioned, under the

laws of West Virginia, the state of the creation of said defendant, could only finish its business, conserve and marshal its assets, pay and discharge its lawful indebtedness and distribute and dispose of its surplus funds, if any, by and through the direction, orders, judgments and decrees of said Circuit Court of Kanawha County, West Virginia, and that any attempt so to do, or any interference with the property, business or assets of said defendant corporation, by any other court wherever situate, except ancillary to and upon the request and authority of said court of original jurisdiction, would be wholly unwarranted and without competent jurisdiction, and all the acts, orders, directions, judgments and decrees of such other court, and all its proceedings, would in that respect be *coram non judice* and without right."

"And your petitioner further shows, that he is advised by counsel and therefore alleges, that the pretended voluntary appearance in this Honorable Court and in this cause by said defendant American Guaranty Company of Chicago on said second day of February, A. D. 1909, by and through its attorneys Gorham & Wales, and its voluntary answer to said bill, and its consent to the appointment of receiver herein, when said corporation had been by the same parties, or in the same interests procured to be declared dissolved, and a receiver therefor so appointed in said state of West Virginia on said 1st day of February, A. D. 1909, gave to this Honorable Court no jurisdiction whatever, but was in fact a fraud upon this Honorable Court, and all proceedings subsequently taken herein are without right, and in truth and in law and fact, null and void."

The answer of the American Guaranty Company of Chicago by its former officers, and the answer of Edwin A. Potter as receiver and the answer of the

Contract-holders Committee (the last two adopt the said answer of American Guaranty Company) each deny these allegations above quoted of Keatley special intervenor. Rec. pp. 222, 223.

It is thus apparent that the issue, formed by such petition and such answers, is the question of the jurisdiction of said United States Circuit Court.

That is, did the decree of dissolution and the appointment of the receiver by the Circuit Court of Kanawha County, West Virginia, so far end the life and power of its officers, that, notwithstanding the provisions of section 59 of Chapter 53 of the Code of West Virginia, such American Guaranty Company of Chicago could not legally appear by its officers or attorneys Gorham & Wales, and file a consent answer in the United States Circuit Court so as to give such court jurisdiction over the person of said American Guaranty Company of Chicago.

In other words, do the provisions of said section 59 authorize such an appearance after such decree of dissolution and such appointment of such receiver?

Special Intervenor Keatley alleged and contended in his petition that such provisions of said section 59 do not authorize such an appearance.

The Federal receiver Potter, the Contract-Holders Committee and the American Guaranty Company in its answer made by its former officers, each contend and allege that such provisions of section 59 do authorize such an appearance.

There is thus formed, as very plainly appears by the petition on the one hand, and the three answers, on the other, only a single issue and that issue is the

jurisdiction of the United States Circuit Court over the person of the American Guaranty Company.

The closing paragraph of Edwin M. Keatley's intervening petition is as follows:

> "That by virtue of the order so made by said Circuit Court of Kanawha County, West Virginia, appointing your petitioner receiver of said Court for the property and assets of said defendant American Guaranty Company of Chicago, it becomes the duty of your petitioner to ask permission of this Honorable Court to intervene specially in this action, not acknowledging, but on the contrary, protesting the jurisdiction of this Honorable Court in the premises, and to ask that this Honorable Court permit to be filed herein, this petition for the purpose aforesaid, etc." Rec. p. 134.

The order granting leave to file such intervening petition after the recital is as follows:

> "It is thereupon ordered that leave be and the same is hereby given said receiver to file his intervening petition instanter, and leave is given the respondents to file their respective answers instanter, and it is further ordered that the replication to said answers be filed within five days from this date."

It was also further provided in such order:

> "And thereupon said intervening petitioner is given one week in which to file his brief upon the question of jurisdiction; the respondents to file their briefs within one week thereafter, and the said intervenor has three days thereafter to reply." Rec. p. 215.

The order grants the prayer of the intervenor, viz., the permission:

"to intervene specially in this action not acknowledging, but, on the contrary, protesting the jurisdiction of this Honorable Court, in the premises, and to ask that this Honorable Court permit to be filed herein this petition for the purpose aforesaid."

It is thus seen that the petition is allowed to be filed, for *the sole purpose of protesting the jurisdiction of the said United States Circuit Court.*

The briefs were filed within the time, and the Court on January 26, 1909, rendered its decision, and the judge thereof thereafter filed a written opinion. Rec. pp. 280-286.

After reading the intervening petition of Keatley, the answers thereto of American Guaranty Company of Chicago, the Federal receiver Potter, and, Contract-Holders Committee and so discovering, that the *single issue* was one of jurisdiction; then reading such order granting leave to file such intervening petition which specially mentions the time given to the parties to file briefs on the question of jurisdiction, and one would hardly think anything more is necessary to determine that the question before such lower court was one of jurisdiction only.

But, in addition we have also the written opinion of Judge Kohlsaat which is *in itself conclusive* that the question of jurisdiction was the question urged by intervenor Keatley.

His Honor Judge Kohlsaat in his opinion at the very outset says:

"This cause is before the Court upon the intervening petition of Edwin M. Keatley, as

receiver appointed by the Circuit Court of Kanawha County, West Virginia, on September 22, 1909, setting up want of jurisdiction in this court, etc." Rec. pp. 280-281.

Again he says:

"The contention is that the decree of the Kanawha County Circuit Court dissolving the corporation, so far ended its life as to deprive it of power to enter its appearance and consent to the appointment of a receiver in this court, that this suit and the proceedings thereunder are void, while at the same time it is insisted that the original receiver became *de jure* receiver of and entitled to reduce to possession all of the assets of said corporation, including those now held by the receiver of this court, by virtue of said decree of February 1, 1909, notwithstanding its terms." Rec. p. 282.

He then quotes three sections of Chapter 53 of the Code of West Virginia, viz., sections 57, 58 and 59.

And continuing says:

"Does the act of the company in entering its appearance to this suit come within the meaning of the provisions of Sec. 59 just enumerated, and had the corporation the power to enter its appearance herein and consent to the granting of the relief prayed? Was the proceeding here a necessary or proper and lawful act done in the corporate name for collecting the debts and claims due to the corporation, conserving its rights enforcing its liabilities, and paying over and distributing its property to those entitled to it?" Rec. p. 283.

Again he says:

"Assuming that the proceeding in West Virginia was under the sections of the statutes of

that state above quoted, what was the effect of the order of the Kanawha County court entered February 1, 1909?

"Did it deprive the Guaranty Company of all authority to enter its appearance and consent to the granting of the prayer of the bill herein?" Rec. p. 284.

And again:

"It is the assumption of the counsel for the intervening petitioner that when the first West Virginia Receiver was appointed, the corporation died, and could not be heard to assert its existence by doing any act in a foreign jurisdiction. The law, however, is as stated by Thompson on Corporations, Sec. 7370, viz.: 'After a corporation becomes dissolved, it can neither sue nor be sued, unless the faculty of suing or being sued is prolonged by statute for the purpose of winding up its affairs.

"The order of the court dissolving the corporation was based upon the statute in that case provided, as otherwise the court might not take jurisdiction to that end; but applying the rule above cited from Thompson on Corporations, does the case come within the doctrine asserted by petitioners, viz., that a dissolved corporation is a corpse? Does not the statute prolong the faculty of suing or being sued for the purpose of winding up its affairs, and is not the present suit a proceeding for that purpose? State v. Laurel Fork Oil & Coal Co., 45 W. Va., 838, and Swing v. Bentley & Gerwig F. Co., 45 W. Va. 283, do not seem conclusive to the contrary." Rec. p. 284.

And concludes as follows:

"I am of the opinion that the prayer of the intervening petitioner should be and it is denied." Rec. p. 286.

The decree of the United States Circuit Court made and entered February 7, 1910, dismissing intervening petition of Edwin M. Keatley, after the recitals is as follows:

> "And the court having heretofore taken all of said matters under advisement and now having duly considered the same, and being fully advised in the premises, finds: That it has jurisdiction in the premises.
>
> "That there is no equity in said intervening petition or in said motion, and that said intervening petitioner, Edwin M. Keatley, is not entitled to any of the relief prayed for in said intervening petition or in said motion.
>
> "Wherefore the premises considered, it is hereby ordered, adjudged and decreed, that said intervening petition and the said motion and each of them shall be and the same are hereby overruled and denied; and the said intervening petition is hereby ordered to be and the same is hereby dismissed." Rec. 287.

Taking such decree with the decision, bearing in mind that there was one single issue formed by the petition of special intervenor Keatley, and the answers thereto, viz., the question of jurisdiction, and, can there be any question in the minds of this Honorable Court that the record in the court below shows that the sole question before that court was the question of the jurisdiction of the said United States Circuit Court as a Federal Court?

Counsel says that there were two questions, the question in the petition, and, the question in the motion.

It appears from the recital in the order a motion

was made at the same time during the proceedings in the court below "to turn over the assets."

How the motion happened to be made or when made, or whether any notice of such motion was given does not appear.

But, assuming the motion was made, what of it? The motion could have no purpose or effect in any way or manner, if the court below had jurisdiction of the American Guaranty Company at the time such federal receiver was appointed.

If the court, however, did not have jurisdiction of the American Guaranty Company at the time of the appointment of the receiver Potter, then the assets of the said American Guaranty Company were wrongfully in the possession of such Court, and it would have been the duty of the court on its own motion (having decided that it had made an order appointing a receiver when it had no jurisdiction) to direct such receiver to yield the possession of the assets of the American Guaranty Company to the receiver appointed by the West Virginia Court.

Further, suppose that, after reciting all the facts and denying the jurisdiction of the Court as was done, in such petition, said Keatley, as such receiver, had asked permission to intervene specially in order to request the court below to order its receiver to turn over the assets in its hands on the ground that such court when it made the order appointing such receiver and directed such assets to be turned over to him and for such receiver to take possession of such assets, had

no jurisdiction of the person of the American Guaranty Company.

Precisely the same question would arise, viz., the question of the Court's jurisdiction.

So that it is immaterial so far as this appeal is concerned whether we consider the motion as made in addition to the petition filed or not, it *raises the same question*, the question of jurisdiction of such court, and no other question.

In other words the right of the possession of the assets in Keatley was a corollary arising from the contention in his petition, viz., if the federal court had made an order appointing a receiver of a corporation over which the federal court had no jurisdiction, and the said court, discovering, *finally*, that it had made such an order, would necessarily yield and direct its receiver to turn the possession of the assets, so wrongfully taken, over to the possession of the party rightfully entitled to have such possession.

So, in any view, it is immaterial to this appeal whether we regard the motion as made or not.

Continuing the discussion, on March 6, 1910, petitioner Keatley presented to the Circuit Judge of said United States Circuit Court Honorable Christian C. Kohlsaat, his petition for appeal and his assignment of errors. Rec. pp. 288, 289.

After the title the petition for appeal is as follows:

> "The above named Intervenor, Edwin M. Keatley, conceiving himself aggrieved by the order and decree entered on the 7th day of February, A. D. 1910, in the above entitled proceeding,

dismissing his intervening petition herein, based solely upon the ground that this Honorable Court has never obtained jurisdiction of the person of the defendant, American Guaranty Company of Chicago, because of the lack of service of process on said defendant, and because no proper or legal voluntary appearance by said defendant was or could be made herein, doth hereby appeal from said order and decree to the Supreme Court of the United States, and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree were made, together with the written opinion of the Honorable Christian C. Kohlsaat, on such question of jurisdiction rendered but not filed herein, duly authenticated, may be sent to the Supreme Court of the United States." Rec. p. 288.

Counsel for appellant were informed and believed at the time such petition was made that his Honor, Judge Kohlsaat, had not filed and would not file his written opinion in such case, but, it appears from the record that it was filed January 26, 1910, at least it was so endorsed.

The Assignment of Errors presented at the same time after the title is as follows:

"And now at the same term, comes Edwin M. Keatley, as receiver, etc., Appellant, and makes and files the following as his assignment of errors, to-wit:

"1st. The Circuit Court of the United States, for the Northern District of Illinois, Eastern Division, erred in taking jurisdiction of and over the person and property of the defendant American Guaranty Company of Chicago, after the decree of dissolution of, and appoint-

ment of a receiver for said defendant, entered pursuant to express statute, by a court of competent jurisdiction in the state of defendant's domicile, such jurisdiction of the said Circuit Court of the United States, resting solely upon a pretended appearance by attorneys for said defendant, appointed as such before said dissolution, and a similar pretended, voluntary appearance by the former President and Secretary of said defendant corporation.

"2. That said Circuit Court of the United States erred in making and entering its order and decree herein, dated February 7th, 1910, denying and dismissing the petition and motion of Edwin M. Keatley as receiver of said defendant corporation appointed by the said State Court, for right to intervene and have and receive as such officer the property and assets of said defendant corporation now in possession of said Circuit Court of the United States." Rec. p. 289.

On the 6th day of May, 1910, his Honor, Judge Kohlsaat, filed such Petition for Appeal and such Assignment of Errors and then and there drew his Order allowing appeal, which is as follows:

"Now comes Edwin M. Keatley, by his solicitors, and presents his petition for appeal and assignment of errors, praying an appeal to the United States Supreme Court from the order and decree entered herein on February 7, 1910.

"This court is of the opinion that no question of jurisdiction is involved in said order and decree, but allows said appeal without certifying to any jurisdictional question, upon the said Keatley filing an appeal bond in the sum of Five Hundred Dollars ($500) with surety to be approved by the court." Rec. p. 290.

Considering then:

1. There is only one issue formed by the special intervening petition of Keatley and the three answers thereto already shown.

2. The prayer in the petition of Keatley to be allowed to intervene, to protest the jurisdiction of the court, and for that purpose to file such petition.

3. The order granting leave to file such intervening petition gives to counsel for Keatley, special intervenor, a week's time to file a brief on the question of jurisdiction, and gives to the other counsel a week to make answer to such brief, and then gives to counsel for Keatley three days to reply on such question of jurisdiction.

4. The opinion of Judge Kohlsaat clearly shows *what* the contention of Keatley was, and *that* the *sole question was one* of *jurisdiction.*

5. The decree dismissing the petition finds that the court *has jurisdiction* and *dismisses the petition.*

6. The *petition* for *appeal* and the *assignment* of *errors* each shows the question of jurisdiction was the sole question.

In view of the record, the order, the decisions and the decree, together with the petition for appeal and the assignment of errors; and, the *Order* allowing the appeal, though it recites "that this court is of the opinion that no question of jurisdiction is involved in said order and decree, but allows said appeal without certifying to any jurisdictional question," just as clearly indicates to this court, as though a certificate had been prepared, that the question on appeal to this court is the question of jurisdiction.

Davis v. C. C. C. & St. L. Ry. Co., *supra*, was a case where the Circuit Court dismissed the action on defendant's objection that the attachment of its property was illegal, and that the Court had therefore not acquired jurisdiction of the person or the property of the defendant; on a motion to dismiss based on the ground, among others, "that the certificate as to jurisdiction was not granted during the term at which the judgment was rendered; that the certificate is not sufficient in law nor proper in form, in that it does not state any facts or propositions of law upon which the court's lack of jurisdiction rested; that the jurisdiction of the court as a federal court was not put in issue," this court speaking through Mr. Justice McKenna on page 171 said:

> "The grounds of the motion based on the form or sufficiency of the certificate are not tenable. Even if we should admit, which we do not, that the certificate is not, as it is contended, in proper form, the record shows clearly that the only matter tried and decided in the circuit court was one of jurisdiction. This is sufficient. United States v. Larkin, 208 U. S. 333, 339."

In re Jefferson *supra*, where a District Court dismissing a libel for salvage services on the ground that there can be no lien for services in extinguishing a fire on a vessel while in a dry dock, and therefore, because the District Court as a court of admiralty, had no jurisdiction of the case, the Supreme Court on an appeal taken directly to it held, that as the question of jurisdiction of the District Court as a federal court was the only question decided by it, the direct appeal to the Supreme Court was proper.

On pages 136 and 137 Mr. Justice White, now Chief Justice White, speaking for the court said:

> "As upon the face of the record, irrespective of the recitals in the order made on the allowance of the appeal, it is apparent that the only question which was decided below was one of jurisdiction, and as the decree which was appealed from on its face shows that the cause was dismissed for want of jurisdiction, the question of jurisdiction, if it is of such a character as to sustain the appeal, was sufficiently certified. United States v. Larkin, 208 U. S. 333, 338. We therefore put the contentions as to the absence of a certificate out of view."

In Excelsior W. P. Co. v. Pac. Bridge Co. *supra*, motion was made by defendants to dismiss the appeal upon the ground that no appeal was taken and no certificate of the trial court upon the question of jurisdiction was made by such court during the term at which the decree was rendered and that no such certificate has since or ever been made. Mr. Justice Brown speaking for the court on page 285 said:

> "This decree, after reciting that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court, and that this court should not further exercise jurisdiction, it is therefore ordered and decreed that said suit be and the same is hereby dismissed for want of jurisdiction. An appeal was taken from this decree, and the order allowing the appeal states that the appeal was allowed: 'from the final order and decree dismissing said suit for want of jurisdiction.' This is clearly a sufficient certificate of the Circuit Court that the jurisdiction of that court was in issue, and the only question to be considered by us relates to the jurisdiction of

> that court. Shields v. Coleman, 157 U. S. 168; In re Lehigh Mining Co., 156 U. S. 322; Huntington v. Laidley, 176 U. S. 668."

In Interior Const. Co. v. Gibney *supra*, the real question raised in the court below on the plea in abatement by defendant was whether or not a general appearance had been made by the defendant in such court.

The court below sustained the plea in abatement holding there was no general appearance and adjudged that the plaintiff take nothing by its action, and that the defendant recover costs.

Thereupon a writ of error was issued to this Court on the question of jurisdiction and this Court held that whether or not there was a general appearance in the lower court was such a question of jurisdiction as was appealable directly to the Supreme Court. And Mr. Justice Gray speaking for the court on page 219 said:

> "The record shows that the only matter tried and decided in the Circuit Court was a demurrer to the plea to the jurisdiction; and the petition, upon which the writ of error was allowed, asked only for the review of the judgment that the court had no jurisdiction of the action. The question of jurisdiction alone is thus sufficiently certified to this court, as required by the act of March 3, 1891."

II.

THE RECORD CLEARLY SHOWS THAT THE SOLE QUESTION DECIDED BY THE COURT BELOW WAS ONE OF JURISDICTION

AND NO CERTIFICATE IS IN SUCH CASE REQUIRED.

While Davis v. C. C. C. & St. L. R. Co. *supra*, has been cited to proposition I, it is equally applicable to the II. proposition.

In that case Mr. Justice McKenna speaking for the Supreme Court on page 171 said:

> "Even if we should admit, which we do not, that the certificate is not, as it is contended, in proper form, the record shows clearly that the only matter tried and decided in the circuit court was one of jurisdiction. This is sufficient. United States v. Larkin, 208 U. S. 333, 339."

All other allegations of the said intervening petition of special intervenor Keatley except those alleging want of jurisdiction are either admitted in each of the answers of the Guaranty Company, Edwin A. Potter as receiver, etc., the Contract-holders Committee, or, are verified by the certified records of the Circuit Court of Kanawha County annexed to such petition.

It does appear in such petition, that an apt deed by said Commissioner Clark of all of said property and assets of said American Guaranty Company of Chicago to said Edwin M. Keatley was duly made under the order and direction of said Kanawha County Circuit Court and duly approved by said court on October 13, 1909, and that therefore the right to the possession of said assets is in said Keatley. Rec. pp. 132, 133.

A mere conclusion of law, from the deed and order approving the same duly certified and annexed to such petition. Rec. pp. 136, 137.

If such United States Circuit Court acquired no jurisdiction of the American Guaranty Company of Chicago by such appearance so made by the former officers and attorneys of said American Guaranty Company, then by such deed the absolute title to such assets vested at once in said Keatley. But, it is contended further and will be so presently argued: That both V. L. Black and Edwin M. Keatley were statutory receivers, whose powers were unalterably fixed by the provisions of said sections 58 and 59 of Chapter 53 of the Code of West Virginia.

That any attempt by the Circuit Court to add to or in any way limit such authority would be and was void.

For,

> "A receiver of a corporation appointed by a court under statutory authority is generally invested by the statute with full title to the property and choses in action of the corporation, in whatever jurisdiction the same may be situated, and is the proper party to suits in relation thereto."
>
> Clark & Marshall on Private Corporations, Vol. 2, p. 961;
>
> Kokomo City Street R. Co. v. Pittsburg, Cincinnati, Chicago & St. L. R. Co. (Ind. App.) 58 N. E. 211.
>
> "Where the court exercises purely statutory jurisdiction, its proceedings must be within the provisions of the statute. Any action of the court beyond the provisions (of the statute) would be without jurisdiction."
>
> Alderson on Receivers, pp. 19, 20, citing—White v. White, 130 Cal. 597.

All the rights and power and authority of Receiver Black passed to Receiver Keatley.

> "Statutes continuing the right of action in the corporation for a certain period of time after its dissolution, such as exist in many of the states, are not properly construed as having the effect of continuing such rights of action in the corporation after a receiver has been appointed to wind up its affairs."
>
> Thompson Commentaries on the Law of Corporations, Vol. 5, Sec. 6900.

And in Sec. 6910 the same author says:

> "From what has preceded, it necessarily follows that where a special statutory provision is made for the winding up of a corporation and distribution of its effects, no action can be maintained by a creditor or policy holder for a similar object, either before or after proceedings have been instituted under the statute, and a receiver appointed."
>
> "Such receiver, trustee, or assignee being clothed with the full powers of such corporation and the right to exercise them in so far as is necessary to wind up its affairs is the sole legal representative thereof with full authority to reduce to possession the corporate property wherever found. This principle is admitted as settled law in the case of Grogan v. Egbert, 44 W. Va. 75. Language of Dent Judge in Strong v. Bentley & Gerwig F. Co., 45 W. Va. 283, 285."
>
> "The effect of appointing a receiver over a corporation is to take the property out of the control of its officers to whom it has been entrusted by its stockholders."
>
> Clark v. Nat'l Linseed Oil Co., 105 Fed 787, 792.

No attempt was made to make Receiver Clark a party to the action in Federal Court.

The receiver appointed by the West Virginia Court not being made a party to the action in the United States Circuit Court at its inception, such court did not and could not acquire jurisdiction over the assets or the person of the American Guaranty Company in Chicago.

Relfe v. Rundle, 103 U. S. 222.

Pendleton v. Russell, 144 U. S. 640.

Bernheimer v. Converse, 206 U. S. 516.

Converse v. Mears, 162 Fed. 767.

Nelson v. Hubbard (Ala. July 27, 1892), 17 L. R. A. 375.

Marion Phos. Co. v. Rachael Perry, 74 Fed. 425.

Merchants L. & T. Co. v. Claire, 107 N. Y. 663.

Fry v. Charter Oak Ins. Co., 31 Fed. 197.

Parsons et al. v. Charter Oak Ins. Co., 31 Fed. 305.

Bank of Denver v. Nat'l Benefit & Casualty Co. et al. (Wiswall intervenor), 70 Fed. 420.

Of course, much force will be given by this Supreme Court to the construction of its own statutes by the Supreme Court of West Virginia.

From the several authorities cited it seems beyond controversy that under the sections 58 and 59 of West Virginia the life and authority of the corporation so dissolved, and over which such receiver was appointed was not continued so as to give the officers of such corporation and attorneys theretofore appointed for such purpose the right to enter a general

appearance in the Federal Court in Chicago and thus give jurisdiction to such court.

To raise this question and to protest such jurisdiction, as said before, receiver Keatley asked the court's permission for leave to specially intervene and for such purpose to file his intervening petition. Such leave was granted.

In Chicago v. Mills, supra, it was held that the failure of the certificate of a Federal Court to show the exact nature of the jurisdictional question relied on to sustain a direct appeal to the Supreme Court, does not defeat the jurisdiction of the latter court, where an examination of the record, aided by the opinion of the Circuit Court, contained therein and made part thereof, distinctly shows the nature of the question of jurisdiction passed upon. And on that proposition Mr. Justice Day, speaking for the court in that case on page 326 said:

> "A Preliminary objection is made that the certificate does not show whether the jurisdictional question arose from insufficient amount, want of diversity of citizenship, collusion, or otherwise. But we are of the opinion that an examination of the record, aided by the opinion of the court contained therein, and made part thereof, distinctly shows that the question of jurisdiction passed upon concerned the collusive character of the action of the complainant.
>
> "We think this brings the case within the ruling in Smith v. McKay, 161 U. S. 355. * * * in which the court, looking into the character of the appeal, the certificate of the court, and the certified copy of the opinion, made part of the record, sustained the court's jurisdic-

> tion, citing, with approval, Shields v. Coleman, 157 U. S. 168, * * * and re Lehigh Min. & Mfg. Co. *supra*."

As we have sought to show, and as clearly appears from reading the certified opinion of his Honor Judge Kohlsaat, made a part of the record in this case, there is no escape from the conclusion that the one question raised and presented to the court below by the intervening petition of Keatley was the question of the jurisdiction of the Federal court as such. That is, the jurisdiction which the court obtained, if any, by the appearance made in behalf of the dissolved corporation by its former officers and by such attorneys or solicitors Gorham & Wales.

The case of Petri v. F. E. Creelman Lumber Co. *supra*, is directly in point. Mr. Justice White, now Chief Justice White, delivered the opinion of the Supreme Court in that case, and on page 492, speaking for the Court, said:

> "A motion to dismiss the writ of error first requires our attention. It is urged that the writ should be dismissed because the bill of exceptions filed below and the certificate made as to the question of jurisdiction on this writ of error were authenticated by a judge other than the trial judge, and further, because the certificate was not made at the term in which the judgment complained of was entered. We are relieved, however, from the necessity of considering these objections, for the reason that the judgment of dismissal and the prior proceedings clearly exhibit the ground upon which the judgment was based, and plainly make apparent on the record the fact that the only matter tried and decided in the circuit court were demurrers to pleas to the jurisdiction, and that the petition upon which

> the writ of error was allowed asked only for the review of the judgment, which decided that the court had no jurisdiction of the action. This being the state of the record, no bill of exceptions or formal certificate in respect to the matter decided was required, and the question of jurisdiction alone was sufficiently certified to this court as required by the act of March 3, 1891."

The other cases cited are to the same effect. It therefore seems conclusively established that the record clearly shows that the sole question decided by the Court below was one of jurisdiction; and, that no certificate in such cases is required; and, hence that the motion to dismiss the appeal should be denied.

III.

THE JURISDICTION OF THE CIRCUIT COURT AS A FEDERAL COURT WAS INVOLVED IN THIS CONTROVERSY BECAUSE NO LAWFUL VOLUNTARY GENERAL APPEARANCE BY THE DEFENDANT WAS OR COULD BE MADE THEREIN AND, BECAUSE OF THE FAILURE TO LAWFULLY SERVE THE DEFENDANT WITH ANY PROCESS.

The case of Davis v. C. C. C. & St. L. Co., *supra*, cited to both the preceding propositions is also in point here.

On pages 171 and 172 of that case Mr. Justice McKenna speaking for the court said:

> "As we have shown, the circuit court decided that it had no jurisdiction over either the person or the property of the principal defend-

ant, the C. C. C. & St. L. R. Co. The first, non-jurisdiction over the person, depending, as the court considered, upon the second, non-jurisdiction over the property, as we understand the opinion. And this view of it the circuit court of appeals took."

(Almost identical with the proposition involved in the controversy here, appellant Keatley in assuming a right to the possession of the property and basing that right on the nonjurisdiction of the United States Circuit Court over the person of Guaranty Company.)

"The latter court stated the questions to be: 'Was defendant's appearance to contest the validity of the attachments and garnishments a general one? Were the cars and credits of defendant subject to attachment and garnishment? In other words, did the trial court secure such dominion over person or property by appearance or process as authorized it to proceed to trial of the action and render a valid judgment upon the issues involved? The trial court answered them in the negative and dismissed the action for want of jurisdiction. In respect of the essential character of these questions, they are not distinguishable from one of the legality of the service of summons upon a defendant. They do not pertain to the merits of the case, and did not arise during the progress of a trial. They lay at the threshold, and upon an affirmative answer depended the power of the court to hear and decide the cause. In legal phraseology that power is termed 'jurisdiction.' It is none the less a jurisdictional matter in the case of attachment and garnishment of property of a nonresident because the power of the court to proceed to trial depends, in the absence of the defendant, upon its lawful seizure of his property. The question of jurisdiction was decided in favor of defend-

ant, and the decision disposed of the case.' For these propositions the court cited Board of Trade v. Hammond Elevator Co., 198 U. S. 428. * * * United States v. Jahn, 155 U. S. 109, * * * St. Louis Cotton Compress Co. v. American Cotton Co., 60 C. C. A. 80; 125 Fed. 196; and, as we have seen, dismissed the case on the ground that this court alone had the power to review the decision of the circuit court. We concur in the views of the circuit court of appeals, for which also may be cited Kendall v. American Automatic Loom Co., 198 U. S. 477."

So we say here, at the very threshold the United States Circuit Court was confronted with the proposition, was the appearance by the former officers of the dissolved American Guaranty Company or the attorneys appointed for such purpose prior to its dissolution, authorized and legal, and did such appearance confer upon the United States Circuit Court jurisdiction over the person of the American Guaranty Company of Chicago?

The case of Interior Const. Co. v. Gibney, *supra*, has already been cited to the I. proposition.

Such case is directly in point on this III. proposition. For, as already stated, the question at the threshold of the action in the United States Circuit Court was the legal right of the former officers of the American Guaranty Company and of Gorham & Wales, attorneys appointed for such purpose, prior to the dissolution of such corporation, to appear in such action in such Circuit Court and file a consent answer, and by so doing could or did give such court jurisdiction of the American Guaranty Company.

In the Interior Construction Co. case I quote from the statement of facts made by Mr. Justice Gray, on page 218 where that distinguished jurist said:

> "The complaint alleged that the plaintiff was incorporated under the laws of the State of New Jersey, and was a citizen thereof; and that all the defendants were citizens and residents of the State of Indiana.
>
> "On June 19, 1890, the defendants Gibney, McElwaine and Wheeler, by their attorney, entered a general appearance. But Gibney never pleaded or answered; and the defendant Bartley never appeared, or made any defense.
>
> "On September 19, 1891, McElwaine and Wheeler pleaded in abatement that at the time of the bringing of this action, and ever since, Gibney and Bartley were citizens of the State of Pennsylvania, and not citizens or residents of the State of Indiana; and that, therefore, the court had no jurisdiction of the case.
>
> "The plaintiff demurred to this plea, as not containing facts sufficient to constitute a cause for the abatement of the action. The plaintiff declining to plead further, but electing to stand upon its demurrer to the plea, the court adjudged that the plaintiff take nothing by its action, and that the defendant recover costs.
>
> "The plaintiff thereupon presented a petition for the allowance of a writ of error 'for the review of the judgment hertofore rendered therein in favor of the defendants and against the plaintiff, therein holding and deciding that this court has no jurisdiction of said action;' and assigned, as errors, that the Circuit Court erred, 1st, in overruling the plaintiff's demurrer to the plea in abatement; 2d, in sustaining the plea in abatement, and holding that the court had no jurisdiction of the cause; 3d, in entering judg-

ment in favor of the defendants and against the plaintiff on the plea in abatement, and dismissing and quashing the proceedings. The writ of error was thereupon allowed by the judge presiding in the Circuit Court."

Mr. Justice Gray delivered the opinion of the court, after stating the facts as quoted, and, therein speaking for the court on page 219 stated:

> "The record shows that the only matter tried and decided in the Circuit Court was a demurrer to the plea to the jurisdiction; and the petition, upon which the writ of error was allowed, asked only for the review of the judgment that the court had no jurisdiction of the action. The question of jurisdiction alone is thus sufficiently certified to this court. * * *"

After quoting from the act of March 3, 1887, Mr. Justice Gray continued:

> "The Circuit Courts of the United States are thus vested with general jurisdiction of civil actions, involving the requisite pecuniary value, between citizens of different States. Diveristy of citizenship is a condition of jurisdiction, and, when that does not appear upon the record, the court, of its own motion, will order the action to be dismissed. But the provision as to the particular district in which the action shall be brought does not touch the general jurisdiction of the court over such a cause between such parties; but affects only the proceedings taken to bring the defendant within such jurisdiction, and is a matter of personal privileges, which the defendant may insist upon, or may waive, at his election; and the defendant's right to object that an action, within the general jurisdiction of the court, is brought in the wrong district, is waived by entering a general appearance, without taking the objection."

It is thus seen that the real basis and ground of the appeal in that action was the appearance of the defendants in court, and whether or not that appearance gave the court jurisdiction.

In the case of Shephard v. Adams, *supra*, the question of the jurisdiction of the court arose on the proposition as to whether or not a sufficient process was properly served upon the defendant, under the law of the state of Colorado.

Mr. Justice Shiras delivered the opinion of the Court and on page 622, speaking for the court said:

> "This case is brought here under section 5 of the act of March 3, 1891, as one involving a question of the jurisdiction of the District Court of the United States for the District of Colorado; and the first contention we have to meet is that of the defendant in error, that the case is not really within the meaning of that section of said act, but presents only the case of an alleged error in the judgment of the District Court, redress for which should have been sought in the Circuit Court of Appeals. It is said that the question of whether or not the District Court acquired jurisdiction by a proper service of process is not one which involves the jurisdiction of the court, within the meaning of that term as used in the act; and the case of Smith v. McKay, 161 U. S. 355, is cited as sustaining such view.
>
> "In the case referred to, the respective parties were duly in court and the subject-matter of the controversy was within the jurisdiction of the court; but it was claimed by the defendant that the plaintiff, instead of asserting his right by a bill in equity, should have proceeded by an action at law, which afforded an adequate remedy. The court below was of opinion that the plaintiff was not wrong in seeking his remedy

in equity. Thereupon the defendant brought the case here directly, contending that the case involved the question of the jurisdiction of the Circuit Court, within the meaning of section 5 of the act of March 3, 1891. But it was held here that the court, in deciding that the plaintiff's remedy was in equity and not at law, was in the lawful exercise of its jurisdiction, and that, if the court was wrong in so deciding, it was an error for which the defendant should have sought his remedy in the Circuit Court of Appeals.

"The present case differs from Smith v. McKay in the essential feature that the contention is that the court below never acquired jurisdiction at all over the defendant by a valid service of process. In such case there would be an entire want of jurisdiction, and a judgment rendered without jurisdiction can be reviewed on a writ of error directly sued out to this court."

So on this appeal, the question, and the sole question is, the entire *want* of *jurisdiction* of the United States Circuit Court by either a service of process or by an authorized and legal appearance of the dissolved corporation of the assets of which a statutory receiver had been appointed.

In Kendall v. American Automatic Loom Co., *supra*, the question arose of whether the validity of the service of a subpoena issued by a federal court upon the resident treasurer of a foreign corporation involves the jurisdiction of that court as a Federal Court so as to sustain a direct appeal to the Supreme Court of the United States under the act of March 3, 1891, from an order setting aside the service, and, it was *there held*, it did. The late Mr. Justice Peckham delivered the opinion of the court in that case and on page 182, speaking for the court said:

> "It is objected, in the first place, by the appellee, that the appellant had no statutory right to appeal directly to this court from the order setting aside the service of the subpoena. It is asserted that the case does not involve the jurisdiction of the court below within the meaning of section 5 of the act of March 3, 1891, * * * inasmuch as the jurisdiction of the circuit court as a Federal Court is not questioned, the jurisdiction being denied upon grounds alike applicable to any other judicial tribunal, state or Federal, under the same circumstances. This case is, however, on that point governed by that of Board of Trade v. Hammond Elevator Co. 198 U. S. 424, * * * where it is held that the order is reviewable by this court under the section above mentioned."

The very contention of counsel for Potter receiver in this case, that the statutes of West Virginia and their provisions are general in their application and that the question which arises under them would be equally applicable to any state or other court.

So is the question of the service of process.

And this Supreme Court says, when such statute raises, at the very threshold of the action, the question of jurisdiction, then it is a question of federal jurisdiction and is appealable, and the question may be brought by direct appeal to this Court.

The case of Chicago Board of Trade v. Hammond Elevator Co. though quoted from by counsel for receiver Potter is, nevertheless directly in point and sustains the contention of appellant on this proposition.

In that case the question was whether or not the validity of the service of process of the Federal Cir-

cuit Court on certain persons as the agents of a foreign corporation involves the jurisdiction of that court so as to sustain a direct appeal to the Supreme Court of the United States under the act of March 3, 1891, from a decree dismissing the bill for lack of valid service. I have quoted from the syllabus in that case. And this Supreme Court there *held* it had jurisdiction to review the action of such Circuit Court in dismissing the appeal.

It would seem then from these authorities, that from the decree dismissing the intervening petition of Keatley as receiver an appeal lies directly to the Supreme Court of the United States.

For, if the former officers and attorneys of the dissolved corporation had no authority or legal right to appear and file a consent answer in such United States Circuit Court then such court never acquired jurisdiction of the person of such American Guaranty Company of Chicago.

As before stated there are only two ways by which the United States Circuit Court could acquire jurisdiction of the person of the American Guaranty Company of Chicago, viz., either by the proper service of a process upon such defendant, or, that such defendant should properly appear in court.

So whether there was a legal voluntary appearance is equally as important as whether there was a legal service of process.

The Supreme Court has passed upon both propositions and has held that in either case an appeal from the Circuit Court lies directly to the Supreme Court. See Interior Const. Co. v. Gibney, *supra*; Davis v. C. C. C. & St. L. R. Co., *supra*.

IV.

THE ENTIRE CONTROVERSY IN THE COURT BELOW WAS WHETHER OR NOT THE DECREE OF DISSOLUTION OF THE AMERICAN GUARANTY COMPANY OF CHICAGO AND THE APPOINTMENT OF BLACK RECEIVER OF THE ASSETS OF SUCH CORPORATION WITHIN THE JURISDICTION OF SUCH COURT UNDER THE PROVISIONS OF SECTIONS 57, 58 AND 59 OF THE CODE OF WEST VIRGINIA SO ENDED THE LIFE AND POWER OF SUCH CORPORATION AND ITS OFFICERS, THAT IT COULD NOT THEREAFTER, BY SUCH OFFICERS OR ATTORNEYS, ENTER A GENERAL APPEARANCE IN THE UNITED STATES FEDERAL COURT SO AS TO GIVE SUCH COURT JURISDICTION IN SUCH ACTION.

If in discussing these several propositions of law some reference is made to the merits of the appeal, it is done either in answer to the argument of the attorney for receiver Potter, or to show that because the United States Circuit Court could not acquire jurisdiction by the appearance therein of said former officers and attorneys of the American Guaranty Company of Chicago, and, hence did not acquire such jurisdiction, therefore, the only question which could have been raised before such court by the appellant Keatley on the record was that of such jurisdiction.

The question which was at the very threshold of this action in the United States Circuit Court was and is, has that court jurisdiction of the person of the American Guaranty Company as appears from the record?

The bill in United States Circuit Court contains this allegation:

> "11. That on February 1, 1909, in accordance with the statutes of the State of West Virginia authorizing the same, a bill in chancery was filed in the Circuit Court of Kanawha County, West Virginia, in which the principal office or place of business of said Guaranty Company is situated, praying that the court decree a dissolution of said Guaranty Company and to make such other orders and decrees as justice and equity may require, and in said bill, so filed, said Pitcher and Bigelow duly intervened and joined as plaintiffs, and joined in the allegations and prayer of said bill; that said Guaranty Company duly entered its appearance to said bill; that on said February 1, 1909, said Circuit Court of Kanawha County, having full jurisdiction of all of the parties to and subject-matter of said bill, duly entered a decree dissolving said American Guaranty Company of Chicago, which decree is now in full force and effect, unmodified, unreversed and unappealed from; and also appointed a receiver, who has duly qualified as such, of all of said Guaranty Company's assets and effects located within said State of West Virginia; that a true copy of said proceedings in said Circuit Court of Kanawha County is herewith brought into court."

As already shown, and, notwithstanding the statement in such paragraph just quoted, V. L. Black was appointed receiver "of all and singular the property and assets of such Guaranty Company within the jurisdiction" of the Circuit Court of Kanawha County, West Virginia.

By all the stockholders and by the Guaranty Company itself, all being parties to the suit, the prayer of the bill of complaint is:

"Appoint one or more persons to be receivers to take charge of and administer the assets of said defendant company."

The corporation itself was a party to its own death.

In State ex. rel. Atty. Gen. v. Fidelity L. & T. Co. 113 Ia. 439, where the court had decreed the dissolution of the corporation and the appointment of a receiver, the corporation appealed from the portion of the decree appointing the receiver, and the Iowa Supreme Court held:

"The defendant by acquiescing in the decree conceded the determination of itself as a legal entity. The appeal from a part of the decree in no way effected the portion appealed from.

"The order of dissolution is as complete and final as it will be in a thousand years.

"The Court was empowered by section 1640 of the Code to make it (the decree) and all have acquiesced in it as made.

"From the time of that entry the corporation has been dead and its agencies ended, its employes, including attorneys, discharged, and it put, without exception or notice of approval, beyond all further corporate activity."

Receiver Black was a statutory receiver.

"Statutory receivers are those who are appointed in pursuance of special statutory provisions, whence they derive their powers, and to which they must look for guidance in performing their duties."

Alderson on Receiver p. 4.

"Where the court exercises purely statutory jurisdiction, its proceedings must be within the

provisions of the statute. Any action of the court beyond the provisions would be without jurisdiction."

Alderson on Receivers pp. 19, 20.

"In a proceeding seeking the appointment of a receiver founded on statute, which provides for receivers in cases not within the inherent power of courts of equity, the statute will be strictly construed, and the allegations and proofs must clearly bring the proceeding within the legislative enactment, and the power by it expressly conferred, or necessary to the effective exercise of such power. The statutory provisions must be strictly followed, they being in derogation of the common law."

Alderson on Receivers, p. 79.

"In very many, if not all, of the states there are statutes providing for the appointment of receivers for particular purposes, as for winding up corporations, in supplementary proceedings and the like, and their rights, duties and powers are, by such statutes, marked out with more or less precision. In such cases the officers whose authority is so created and specified have been said to more nearly resemble statutory assignees than receivers of the court of chancery; but in another jurisdiction it has been asserted that the powers and functions of statutory receivers are far more extensive than those of an assignee in a voluntary assignment; that he represents the interest of both debtor and creditors, and is a trustee for all parties."

Alderson on Receivers, p. 276.

"Unlike common law receivers, whose powers are given by the order of appointment, statutory receivers, being those authorized by statute in cases where a court of equity has not inherent power to appoint receivers, derive their powers from the statutes in pursuance of which they are

appointed. Not only must the statute be strictly followed in appointing the receiver, but also in the exercise by the receiver of his powers."

Alderson on Receiver p. 277.

"Where the statute expressly defines the powers of the receivers which it authorizes to be appointed they are confined to the exercise of those powers and such others only as are implied."

Alderson on Receiver pp. 523, 524.

"It is well settled, as a general principle, that unless jurisdiction is conferred by statute, courts of equity have no jurisdiction to decree a dissolution of a corporation, or declare a forfeiture of its charter for misuser or nonuser, but the only remedy is at law. And this is true whether the suit be brought by a stockholder or other private individual, or by the attorney or solicitor general in the name and on behalf of the state."

Clark & Marshall on Private Corp. Vol. 2 Sec. 319, pp. 912, 913.

"Unless the jurisdiction be conferred by statute a court of equity is without jurisdiction to decree the dissolution of a corporation."

Conklin v. United States Shipbuilding Co., 140 Fed. 219.

The proceedings in the Circuit Court of Kanawha County, West Virginia, on February 1, 1909, were all statutory proceedings.

That being so, receiver Black was a statutory receiver.

Sections 58 and 59 of Chapter 53 of the Code of West Virginia define the powers of such receiver.

Section 58 provides:

> "When a corporation * * * is dissolved upon sufficient cause being shown therefor, such court as is mentioned in the preceding section may, on application of a * * * stockholder, appoint one or more persons to be receivers to take charge of and administer its assets."

Section 59 provides:

> "When a corporation shall * * * be dissolved, its property and assets shall, under the order and direction * * * of the receiver or receivers appointed for the purpose by such Circuit Court as is mentioned in the 57th section of this Chapter be subject to the payment of the liabilities of the corporation and the expenses of winding up its affairs; and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests."

When no receiver has been appointed then the provisions of said section 59 provide as follows:

> "When a corporation shall * * * be dissolved, its property and assets shall, under the order and direction of the Board of Directors then in office, * * * be subject to the payment of the liabilities of the corporation etc."

Certainly, when a receiver is appointed the Board of Directors can not take charge of and administer the assets.

There is nothing in the record which shows any action or attempted action on the part of the Board of Directors, either by way of authorizing the appearance of the corporation or the attorneys in such court, nothing of the kind is alleged. While it appears certain from the record that all the stockholders and the corporation itself, being parties in the chancery suit brought in the Circuit Court of Kanawha County,

West Virginia, on February 1, 1909, to dissolve the corporation and *appoint one or more persons receivers to take charge of and administer its assets*, (such county being the domicile of such corporation), all of the personal assets of the corporation were certainly within the jurisdiction of such court, and V. L. Black was by such decree made *receiver of all of such personal assets to the amount of $1,300,000*. Yet, independent of that, V. L. Black being a statutory receiver was vested with all the rights of a statutory assignee, and was entitled to the possession of all of the property of such dissolved corporation wherever situate.

Relfe v. Rundle, 103 U. S. 222.
Pendleton v. Russell, 144 U. S. 640.
Alderson on Receivers, p. 276.

Certainly, it was a question whether or not, after such decree of dissolution of the American Guaranty Company of Chicago, and the appointment of such receiver, the former officers of such corporation or attorneys appointed prior to such dissolution had any authority to appear for such dissolved corporation in the Circuit Court of the United States and thus confer jurisdiction on such court.

If such officers and such attorneys were not invested with such power, then the United States Circuit Court acquired no jurisdiction. What such court may have done thereafter, and what its receiver may have done thereafter, and what the creditors may have done thereafter, no matter how many of them may have appeared and filed their accounts in such court, in no manner gives jurisdiction, the question of the

court's jurisdiction relates back to the very threshold of the action and depends entirely upon the legality of such voluntary appearance by such former officers and such attorneys of such dissolved corporation.

This is not a question of expediency or of deferred rights, or whether or not, as attorney for receiver Potter contends:

> "The inventory filed by the receiver in the Federal Court on March 26, 1909, shows assets in his possession amounting, in cash and securities to over $1,400,000. Seven thousand two hundred nineteen claimants have filed proofs of claims with the Master in Chancery to whom the matter was referred by the Federal Court."

All that has no bearing upon the question of the jurisdiction of the United States Circuit Court. Such Court obtained jurisdiction, or, has no jurisdiction, by such pretended appearance.

It would be just as proper for counsel for appellant Keatley to urge in answer to such statement of attorney for receiver Potter that such statement of counsel is untrue, that from the report of receiver Potter, Rec. (p. 170) it appears that in any event the net liabilities of the American Guaranty Company of Chicago are $1,085,755.95; and, to meet said liabilities there is only a net balance of assets of $792,864.99.

And that such liabilities may in the opinion of such receiver amount to $2,075,398.32.

It would not be a competent argument to the question before this Supreme Court for counsel for appellant to urge, that notwithstanding such condition the said Contract-holders are represented through

the said Contract-holders Committee by the very attorneys Gorham & Wales, who sought to give the Federal Court jurisdiction by appearing as the attorneys for the dissolved corporation in the first instant.

That is, attorneys for an insolvent corporation on the 2nd of February and attorneys for the creditors of that insolvent corporation on the 6th of February.

All of that has no application to the motion before this Supreme Court.

Counsel contends that there were two questions at least before the Court below, one was on the motion made by receiver Keatley, that the said United States Court direct its receiver to turn over to receiver Keatley the assets then in the possession of said Court belonging to said American Guaranty Company, and, the *question of jurisdiction* raised by such intervening petition of Edwin M. Keatley as such receiver.

The action in the United States Circuit Court was not an action *in rem*.

On the contrary such action was against the person of the American Guaranty Company of Chicago.

Then the jurisdiction of such court in no way depended upon the possession of the assets of said American Guaranty Company being in such court or being within the jurisdiction of such court, but on the contrary, the jurisdiction of such court depended upon whether or not there was a service of process upon such defendant or whether such defendant made a legal and authorized voluntary appearance in such court, such as to give such court jurisdiction.

The question of service of process is out of the case, as no pretence is made of any service of process.

Therefore, whether or not the United States Circuit Court and its receivers were in the lawful possession of the assets of such corporation depends entirely upon whether such court had jurisdiction of the person of the American Guaranty Company of Chicago.

Whether or not such United States Court had jurisdiction of the person of said American Guaranty Company depends in turn upon the authority or lack of authority of such dissolved American Guaranty Company of Chicago to voluntarily appear in such court by its former officers and by attorneys theretofore appointed for such purpose, after its dissolution and the appointment of a receiver.

So it is contended that when appellant Keatley made the motion in the court below that such United States Circuit Court direct its receiver to turn over the possession of the assets of the American Guaranty Company of Chicago then in his possession to such receiver Keatley, that by such motion the question of the jurisdiction of such court over the person of such American Guaranty Company was raised. And this is so because the right of possession of such Federal Court to the assets of such dissolved corporation depended entirely upon the jurisdiction of that court over the person of the American Guaranty Company of Chicago.

Therefore, to question the right of possession was to question the jurisdiction of the court.

In view of the premises it seems clear that the motion of receiver Potter to dismiss this appeal should be denied.

Finally, it is said in

ANSWER TO ARGUMENTS OF COUNSEL FOR RECEIVER POTTER.

I.

Counsel for Receiver Potter correctly states the law to be that in an appeal directly to the Supreme Court of the United States from the Circuit Court to raise the question of the jurisdiction of the Circuit Court, there must be a certificate of the Circuit Judge to the effect that the only question sent up is one of jurisdiction, or that the equivalent of such certificate must be shown by the record.

Counsel fails, however, in his attempt to show that the present case is without the operation of such rule. The record here clearly shows that the question raised by the appeal is solely that of the jurisdiction of the Circuit Court as a Federal Court. In such case a certificate is not necessary.

The prayer of the intervening petition, the order allowing the filing of such petition, the decision of the Circuit judge, the order denying the prayer of the petition, the petition for appeal, the order allowing the appeal, the assignment of errors, show clearly and definitely that only a single question is presented, and that single question is the initial jurisdiction of the Circuit Court.

His attempt to show that there is an appeal from a judgment involving several issues fails, as it is seen that the only issue raised by the intervening petition and the answers thereto is the sole issue of the initial jurisdiction of the lower court.

His argument to the point that the asking for an order by the Circuit Court directing Receiver Potter to turn over the assets of the American Guaranty Company to Receiver Keatley raises a question of equity as between two receivers, *fails* when it is observed that the basis of the asking of such an order is not that there is any greater equity in favor of the possession of Receiver Keatley, than there is in the possession of Receiver Potter, but that if the Circuit Court did not acquire *jurisdiction of the person of the American Guaranty Company, then it never acquired any jurisdiction of its property*, and it so held it without right. This question lies deeper than the matter of equity between two receivers. It questions the jurisdiction of the Circuit Court over either the property or person of the American Guaranty Company, because of want of appearance or service of process on it.

The asking for such an order raises only the question of the right of the Circuit Court to take possession of such assets by virtue of the fact that it had not properly before it the owner of such assets. If the owner of the assets was not properly before it, certainly the assets were not, as there was no proceeding here analogous to a proceeding *in rem* to acquire jurisdiction over the assets.

As to the proposition that the assignment of errors raised a question other than that of jurisdiction, because it assigned as error the refusal of the Court to turn over the assets to Receiver Keatley, the answer is that the basis for such assignment was the lack of the initial jurisdiction of the Court to take over such assets when the owner of the assets was not before the Court, and the assets were not in Court by any proceeding against them.

II.

In his second point Counsel states the law to be that no appeal directly to the Supreme Court of the United States from the Circuit Court can be maintained on the ground of jurisdiction where the jurisdiction of the Federal Court as a Federal Court is not raised.

Assuming this statement of the law to be a correct one, the present case does not come within that rule.

The present case is one where the question *is* that of the initial jurisdiction of the Circuit Court as a Federal Court. It raises the question as to the proper voluntary appearance of the American Guaranty Company without which the Court could not take jurisdiction of the American Guaranty Company or its property.

It therefore comes within the rule of the cases heretofore cited and discussed which hold that an appeal lies directly to the Supreme Court from the Circuit Court, where the question raised by an appeal is that of the initial jurisdiction of the Court.

based upon either the lack of the service of process, or lack of proper voluntary appearances. These cases hold that the jurisdiction of the Federal Court as a Federal Court is there the question raised.

The attorney for receiver Potter, on page 29 of his brief, refers to the recital in the order of the court allowing the appeal, viz., "This court is of the opinion that no question of jurisdiction is involved in said order and decree." The answer to that suggestion is very simple.

The United States Circuit Court, as appears from the opinion of Judge Kohlsaat, adopted the same view as the attorney for receiver Potter, viz., that such West Virginia statute is a general statute and so applicable to State Courts as well as to the United States Courts. Therefore, in the opinion of such court, whether or not the officers of such dissolved corporation, or the attorneys appointed prior to its dissolution, could legally enter a voluntary appearance and thus give such Circuit Court jurisdiction, did not raise the question of the jurisdiction of such court as a federal court.

However, it is contended on the part of appellant that such is the very question of jurisdiction which lies at the threshold of this controversy.

Respectfully submitted,

F. W. HOUGHTON,
Attorney for Appellant.

EDWIN M. KEATLEY,
as Receiver, etc.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

No. 84

EDWIN M. KEATLEY, AS RECEIVER OF AMERICAN GUARANTY COMPANY OF CHICAGO, UNDER APPOINTMENT OF THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA,

Appellant,

vs.

CARRIE REBECCA FUREY, AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF CHARLES LA TOUR FUREY, DECEASED, AND ALSO IN HER OWN RIGHT; EDWIN A. POTTER, AS RECEIVER OF THE AMERICAN GUARANTY COMPANY OF CHICAGO, BY APPOINTMENT OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, ET AL.,

Appellees.

BRIEF AND ARGUMENT ON BEHALF OF APPELLEE EDWIN A. POTTER, AS RECEIVER OF THE AMERICAN GUARANTY COMPANY OF CHICAGO.

LEVY MAYER,
Attorney for Appellee Edwin A. Potter, as Receiver of the American Guaranty Company of Chicago.

CHICAGO, ILLINOIS.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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STATEMENT OF THE RECORD.

On April 3, 1911, appellee submitted his motion to dismiss this appeal, on the ground that this court has no jurisdiction. The court postponed determination of that motion until the hearing on the merits. A sufficient statement of the facts is contained in appellee's argument in support of that motion.

BRIEF.

I.

THE AMERICAN GUARANTY COMPANY OF CHICAGO COULD BE SUED IN THE FEDERAL COURT SITTING IN ILLINOIS, NOTWITHSTANDING THE COMPANY'S DISSOLUTION BY THE STATE COURT OF WEST VIRGINIA AND THE FEDERAL COURT OF CHICAGO HAD JURISDICTION IN THE CASE AT BAR (pp. 6-24).

Secs. 57, 58, 59 of Corporation Act of West Virginia (Code of West Virginia, ch. 53).

Miller's Admx. v. *Newburg Orell Coal Co.*, 31 W. Va., 836.

Stiles v. *Laurel Fork Oil & Coal Co.*, 47 W. Va., 838.

Hamilton v. *Glenn*, 85 Va., 901.

Richmond Union Passenger Ry. Co. v. *N. Y. Seabeach Co.*, 95 Va., 386.

White Mountain Paper Co. v. *Morse*, 127 Fed., 643.

U. S. v. *Cranch*, 5 Cranch, C. C., 371.

Metropolitan Rubber Co. v. *Place*, 147 Fed., 90.

Bradley Salt Co. v. *Norfolk Importing & Exporting Co.*, 101 Fed., 681.

Bacon v. *Robertson*, 18 How., 480.

Olmstead v. *Distilling & C. F. Co.*, 73 Fed., 44.

McLish v. *Roff*, 141 U. S., 661.

O'Neal v. *U. S.*, 190 U. S., 36.

Relfe v. *Rundle*, 103 U. S., 222.

Chesapeake & Ohio Ry. Co. v. *McCabe,* 213 U. S., 207.

Re Metropolitan Railway Receivership, 208 U. S., 90.

Taylor v. *R. R. Co.,* 7 Fed., 381.

Bank v. *N. Y. Silk Co.,* 11 Fed., 532.

Johnson v. *Loan Assn.,* 99 Fed., 646.

Ohio & M. Ry. Co. v. *Russell,* 115 Ill., 52, 57.

Bartlett v. *Cicero L. H. & P. Co.,* 177 Ill., 68, 74.

Paddock v. *Staley,* 13 Colo. App., 363.

Bloomfield v. *Van Slike,* 107 Ind., 480.

II.

THE RECEIVER APPOINTED IN THE WEST VIRGINIA DISSOLUTION PROCEEDINGS WAS NOT A STATUTORY RECEIVER, BUT A MERE CHANCERY RECEIVER, AND HE WAS NOT INVESTED BY STATUTE WITH THE TITLE TO THE PROPERTY OF THE DISSOLVED CORPORATION, OR MADE ITS LEGAL SUCCESSOR (pp. 24-39).

Great Western M. & M. Co. v. *Harris,* 198 U. S., 561.

Bacon v. *Robertson,* 18 How., 480.

Bernheimer v. *Converse,* 206 U. S., 516.

Stiles v. *Laurel Fork Oil & Coal Co.,* 47 W. Va., 838.

Relfe v. *Rundle,* 103 U. S., 222.

Parsons v. *Charter Oak Life Ins. Co.,* 31 Fed., 305.

Pendleton v. *Russell,* 144 U. S., 640.

American Nat'l. Bank v. *Nat. Benefit & Casualty Co.,* 70 Fed., 420.

Nelson v. *Hubbard,* 96 Ala., 238.
Swing v. *Bentley & G. Furniture Co.,* 45 W. Va., 283.
Groom v. *Mortimer Land Co.,* 192 Fed., 849.

III.

EVEN IF THE WEST VIRGINIA RECEIVER WERE A STATUTORY RECEIVER, NEVERTHELESS HE ACQUIRED NO TITLE TO THE PROPERTY BEYOND THE JURISDICTION OF THE COURT APPOINTING HIM, INASMUCH AS THE ORDER APPOINTING HIM LIMITED HIS AUTHORITY TO THAT JURISDICTION (pp. 39-41).

Secs. 57, 58, 59, West Virginia Corporation Act (Code of West Virginia, Ch. 53).

IV.

THE LEGAL SITUS OF THE PROPERTY HERE INVOLVED IS IN ILLINOIS AND NOT IN WEST VIRGINIA. AS THE WEST VIRGINIA COURT APPOINTED A RECEIVER OF ONLY THE PROPERTY WITHIN ITS JURISDICTION, IT FOLLOWS THAT SUCH RECEIVER COULD ACQUIRE NO TITLE TO ANY OF THE PROPERTY IN CONTROVERSY (pp. 41-47).

Wyman v. *Halstead,* 109 U. S., 654, 656.
Railway Co. v. *Sturm,* 174 U. S., 710.
Blackstone v. *Miller,* 188 U. S., 189.
State Board of Assessors v. *Comptoir National,* 191 U. S., 388.
New England Mutual Life Ins. Co. v. *Woodworth,* 111 U. S., 138.
Buck v. *Beach,* 206 U. S., 392.
Jellenik v. *Huron Copper Mining Co.,* 177 U. S., 1.
Sellinger v. *Kentucky,* 213 U. S., 200, 204.

V.

APPELLANT'S CHARGE OF BAD FAITH IS WITHOUT ANY JUSTIFICATION IN FACT, AND IS WHOLLY IMMATERIAL AS A MATTER OF LAW (pp. 47-53).

Blair v. *Chicago*, 201 U. S., 400.
So. Dakota v. *North Carolina*, 192 U. S., 286.
Re Metropolitan Railway Receivership, 208 U. S., 90.
Re Cleland, 218 U. S., 120.

ARGUMENT.

I.

THE AMERICAN GUARANTY COMPANY OF CHICAGO COULD BE SUED IN THE FEDERAL COURT SITTING IN ILLINOIS, NOTWITHSTANDING THE COMPANY'S DISSOLUTION BY THE STATE COURT OF WEST VIRGINIA, AND THE FEDERAL COURT AT CHICAGO HAD JURISDICTION IN THE CASE AT BAR.

The contention of appellant is, as stated on p. 103 of his brief, that after the dissolution of the Guaranty Company by the decree of the West Virginia state court, and the appointment of a receiver, "the former officers of such corporation had no power or authority to appear in the Federal Court in Chicago and give jurisdiction to that court in such suit brought by the complainants therein."

A careful reading of the West Virginia statute will, we believe, clearly show that appellant's contention rests entirely upon a forced and erroneous construction.

Section 57 of the statute in question provides that if not less than one-third in interest of the stockholders of a corporation desire to wind up its affairs they may apply by a bill in chancery to a Circuit Court, setting forth the grounds of their application,

> "and the court may thereupon proceed *according to the principles and usages of equity* to hear the matter, and if sufficient cause therefor be shown, to decree a dissolution of the

corporation, and *make such orders and decrees and award such injunctions in the cause as justice and equity may require.*"

Section 58 of the same statute provides that when a corporation expires, or is dissolved, or even before its expiration or dissolution, upon sufficient cause shown, the Circuit Court "*may,*" on application of either a creditor, or a stockholder,

> "appoint one or more persons to be receivers to take charge of and administer its assets; and *whether such receiver be appointed or not, may make such orders and decrees and award such injunctions in the cause as justice and equity may require.*"

Section 59 of the statute provides that when a corporation shall expire, or be dissolved, its property shall

> "under the order and direction of the board of directors then in office, or the receiver or receivers appointed for the purpose by such Circuit Court * * * be subject to the payment of the liabilities of the corporation and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. *And suits may be brought, continued or defended, the property, real and personal, of the corporation be conveyed or transferred under the common seal or otherwise, and all lawful acts be done, in the corporate name, in like manner and with like effect as before such dissolution or expiration;* but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto."

Thus, the legislature of West Virginia has, in unmistakable language provided that the dissolution of a corporation shall not absolutely terminate all its corporate powers, but that, notwithstanding such dissolution, suits may still be brought, continued or defended by the corporation, and its property may be conveyed, and all lawful acts may be performed by it, "*in like manner and with like effect as before such dissolution.*" The only limitation on the exercise of this power is that the corporate action shall be necessary, or proper for collecting its property, converting the same into money, prosecuting and protecting its rights, and distributing its property to those entitled thereto.

Under the express provisions of the statute the Guaranty Company can prosecute and defend, can sue and be sued after its dissolution indefinitely until all of the debts and claims owing to it have been collected, all its property and rights converted, and until all its liabilities have been enforced and its property and assets distributed. The suit in which this appellee was appointed receiver, was concededly of the character indicated in the statute, its object being to collect and equitably distribute the company's assets among all of its creditors and all other persons entitled thereto.

The order of February 1, 1909, entered by the West Virginia court does not purport to oust the company of any of the powers so reserved to it by section 59 of the statute, or to divest it of title to any of its property. That order was merely one in the usual form, appointing a receiver in chancery to

take possession of the company's property "*within the jurisdiction of this court*" (Rec., 53), and provided that before entering upon the discharge of his duties, the receiver should give a bond conditioned according to law.

There is not the slightest suggestion in the statute to support appellant's theory that the clause in section 59 continuing corporate functions, notwithstanding dissolution, may be exercised by the corporation only when no receiver is appointed, and by the receiver only, where one is appointed. No good reason has been assigned for so interpreting the statute, and there clearly is no need for such a forced construction, inasmuch as the corporate rights which are preserved may, whether a receiver be appointed or not, be exercised only for the purpose of conserving and collecting the corporate assets and distributing them among the parties entitled thereto, and protecting corporate rights. The language of the statute is clear, that a corporation may, notwithstanding its dissolution and the appointment of a receiver, continue to exercise the specified corporate functions, (subject only to the purposes named), "*in like manner and with like effect as before such dissolution;*" and it is difficult to conceive how a receiver could execute the reserved powers "in like manner" as the corporation itself could. The interpretation given this clause by appellant entirely eliminates the phrase, "in like manner." Counsel for appellant have cited no authority for their novel position. And if their contention be sound, then, we inquire, why did counsel have the order of September 22, 1909, appointing ap-

pellant receiver, direct that the Guaranty Company execute a conveyance of its property to appellant within 15 days, otherwise such conveyance to be made by a special commissioner? If the clause in section 59 continuing corporate functions only applies to the company when no receiver is appointed, and only applies to the receiver when one is appointed, then the West Virginia court was ordering the company to do the impossible when it directed it to make a conveyance.

The Supreme Court of West Virginia in *Miller's Admx.* v. *Newburg Orrell Coal Co.*, 31 W. Va., 836, (1888), said with respect to the very statute here involved:

> "Very soon after *Rider* v. *Factory*, 7 Leigh, 154, was decided and according to a suggestion of the court in that case the General Assembly of Virginia at the session of 1836-7 passed an act which has ever since been in force. This statute without material change was incorporated in our Code in 1868 and has continued to be and still is in force in this state. It provides in substance that when a corporation shall expire or be dissolved its property and assets shall * * * be distributed among its stockholders. * * * It provides, in general terms, that suits may be brought or defended in the corporate name with like effect as before the dissolution, so far as shall be necessary for collecting the debts and enforcing the liabilities of the corporation. This language is certainly sufficiently comprehensive to embrace any suit, whether at law or in equity, which is proper for collecting the debts due to, or enforcing the liabilities against, the corporation; and this seems also necessary to give effect to the general object and purpose of the statute. It was evidently intended to be for the mutual benefit of

the creditors of the corporation, as well as for the stockholders and *the corporation itself.*"

In *Stiles* v. *Laurel Fork Oil & Coal Co.*, 47 W. Va., 838, the court said:

> "By the common law, when a corporation expires, its lands revert to their grantors, its personalty goes to the crown, and debts to or from it are extinguished. (Citing authorities.) * * * And upon the expiration of the charter, at common law, all pending suits abated, and no suit could be instituted against it, because, unlike natural persons, it was dead, without heirs or officers for service of process. So it had neither property nor representatives. (Citing authorities.) Thus there could be no attachment against it. This unreasonable rule of the common law, leaving the corporations vested with no property to pay debts, and creditors no remedy, was obviated by the good sense of equity jurisprudence, which entertained a suit by a creditor to enforce their demands against the property of the company. (Citing authority.)
>
> But while the common law did not allow any suit after expiration of the charter, our statute (Sec. 59, c. 53, Code) adopts the principles of courts of equity before its adoption, namely, that *for some purposes the corporation still owned its property:* that is,—*First,* for the payment of the creditors; and *secondly,* for the purpose of giving the residue of its assets to the stockholders."

The same doctrine was laid down in a number of decisions in Virginia, from which state, as shown by *Miller's Admx.* v. *Newburg Orrell Coal Co.*, 31 W. Va., 798, *supra,* the statute under consideration was taken.

Hamilton v. *Glenn,* 85 Va., 901.

Richmond Union Passenger Ry. Co. v. *N. Y. Seabeach Ry. Co.,* 95 Va., 386.

And this court in *Bacon* v. *Robertson*, 18 How., 480, applied the equitable doctrine referred to in *Stiles* v. *Laurel Fork Oil & Coal Co., supra.*

In *White Mountain Paper Co.* v. *Morse*, 127 Fed., 643, (1 C. C. A., 1904), a New Jersey corporation was adjudged a bankrupt in New Hampshire, although a prior decree of dissolution had been entered by the court in New Jersey under the statutes of that state. The court said (p. 645):

> "Following the ordinary practice in nearly all, if not all, the states, the legislature of New Jersey provided that a decree of dissolution should be, to a certain extent, only *nisi*, so that a corporation does not immediately on such a decree cease to live, but retains for a specified period a qualified existence. Even if, under such legislation, from the time of the nominal dissolution, no judgment could be rendered against the corporation according to the statutes of the state of its domicile, *foreign tribunals, including federal courts and state courts in exercising their appropriate jurisdictions, permit the corporation meanwhile to sue and be sued in its own name, and judgments to be entered for and against it accordingly.*" (Citing a number of authorities.)

Even if the West Virginia court had appointed a receiver on February 1, 1909, of all the Guaranty Company's property, wherever located, the Company would still have been subject to a suit subsequently brought against it in the Federal Court sitting in Illinois. There is nothing in the West Virginia statute to prevent the institution of such a suit, but, on the contrary, its language expressly permits it. Furthermore, if the West Virginia statute had in fact prohibited such a suit, we do not

think that the Federal Court at Chicago, sitting in equity, would have been bound thereby. (*Bacon* v. *Robertson*, 18 How., 480.)

Appellant's counsel, (Br., bottom p. 101), after asserting that because of the decree of February 1, 1909 dissolving the corporation and appointing a receiver, the company could not appear to defend itself in litigation thereafter brought against it in West Virginia, make the unqualified statement, "that it could not so appear in West Virginia has been decided at least twice by the Supreme Court of West Virginia in the two cases cited, one from 44 W. Va., 75; and the other 45 W. Va., 284."

We have carefully examined both of those cases and cannot understand why counsel cited them, inasmuch as neither of them considers, or even refers to the question of the right, or power of a dissolved corporation, for which a receiver has been appointed, to appear thereafter and defend itself in court proceedings. Indeed, no such question was ever involved in either of those cases.

To say that the dissolution of the Guaranty Company on February 1 so annihilated the company as to prevent it from entering its appearance or filing an answer in the Federal Court at Chicago on February 2, is in the teeth of the West Virginia statute. If the contention of counsel be sound, it would follow that if, prior to its dissolution, the Guaranty Company had itself instituted a suit, or had been sued in the Federal Court at Chicago, then immediately upon its dissolution it could no longer prosecute or defend such foreign suit, and it would then be impossible to protect the company's rights

as contemplated and expressly provided for in section 59 of the statute. It is no answer to say that the West Virginia receiver could enter such foreign jurisdiction and prosecute or defend the supposed suit, inasmuch as that receiver is not, as we shall presently show, a statutory receiver and has no extra-territorial powers. And it is clear that V. L. Black, who was appointed receiver in the West Virginia proceedings on February 1, could not act outside of the jurisdiction of the West Virginia court, because his appointment was expressly limited by the order appointing him to the property located within the jurisdiction of the court, and the only power given him was to take possession of so much of the company's property as was located within that jurisdiction. (Rec., 53.*) The order did not even authorize the receiver to represent the company in any litigation whatsoever, much less in litigation outside of the State of West Virginia.

This record shows that the Guaranty Company's answer to the bill at bar was signed by its president and attested by its secretary, and corporate seal, and was also signed by its solicitors (Rec., 56), who, as the record shows, were expressly authorized by a resolution adopted by the Guaranty Company on January 30, 1909 (two days before the company's dissolution) to enter the company's appearance in any proceedings which might be instituted in any court, State or Federal, sitting in Chicago, Illinois, and in such proceedings to consent to the appointment of a receiver. (Rec., 218.) In

*All record references are to the printed pages of the transcript of record.

view of the statute we confidently submit that the company could lawfully be sued in the case at bar, and that its answer was properly filed and gave the court jurisdiction over its person.

Appellant also attacks the jurisdiction of the Federal Court, on the alleged ground that the Royal Trust Company was an indispensable party and that it was a citizen of the same state as complainants. This is a question not presented by any assignment of error (Rec., 289), and moreover, we deny that the Royal Trust Company was an indispensable party. It was not even a trustee of an active trust, but was merely a custodian or depository of certain funds.

Certain of the contracts issued by the Guaranty Company provided that a specified per cent. of the moneys should be deposited with the Royal Trust Company, but the mere fact referred to by counsel (Br., 46), that the contracts contained a provision that in case of the dissolution of the Guaranty Company the funds so deposited should be divided among the holders of certain contracts in a specified proportion, did not devolve any duty whatever on the part of the Royal Trust Company, nor change the character of the deposit so as to take it away from the assets of the Guaranty Company. The agreement between the Guaranty Company and the Royal Trust Company, from which the duties of the latter must be ascertained (Rec., 95-98), merely makes the Trust Company a depository, and nothing more, and the Guaranty Company retains the right to terminate the agreement at any time and direct the transfer

jurisdiction and appointed appellee, Edwin A. Potter, receiver, the West Virginia receiver (Keatley) filed his petition in the Federal Court. It is also pertinent to remark at this time that W. R. Gilliam, who so filed his petition in the West Virginia court on September 22, 1909, is the same W. R. Gilliam who had theretofore (August 22, 28 and September 1, 1909) come into the Federal Court proceedings at Chicago, filed his claims therein and submitted to the jurisdiction of that court. (Rec., 237.)

Were it at all desirable to further strengthen the discussion on this point, it would be pertinent to refer to the doctrine laid down in *Chesapeake & Ohio Ry. Co.* v. *McCabe,* 213 U. S., 207, and numerous prior decisions of this court therein referred to, that even if jurisdiction had been improperly assumed by the Federal Court at Chicago on February 2, 1909, the West Virginia court could not thereafter, on September 22, 1909, legally enter any order the effect of which was to attack collaterally the jurisdiction theretofore and then being exercised by the Federal Court. And in this connection, and in answer to the contention of counsel for appellant, so frequently and extensively argued in their brief, that there was no dispute or controversy in the Federal Court because the defendant admitted the allegations of the bill and consented to the appointment of the receiver, we have only to refer to *Re Metropolitan Railway Receivership,* 208 U. S., 90, at p. 107.

A further suggestion is also appropriate here, in answer to the contention that the deposit in the

Royal Trust Company was a controlling motive for the litigation, and that the Trust Company did not resist. The deposit in the Trust Company was $566,719.50. (Rec., 113-117.) The total funds collected by Receiver Potter, as shown by his inventory (Rec., 263) was $1,409,234.07. The Royal Trust Company vigorously resisted and contested the attempt by Receiver Potter to secure possession of the deposit held by it. Pages 61 to 125 of the transcript show the proceedings that were necessary before the order could be secured under which the deposit was paid by the Trust Company to Receiver Potter. The demurrer of the Trust Company, filed on February 13, 1909 (Rec., 90) was heard and overruled after protracted argument. On March 6, 1909, the Trust Company was ordered to turn over the deposit to Receiver Potter (Rec., 126-128). That order and all the proceedings antedating it show a serious contest entirely free from the "friendliness" charged by appellant.

The bill in the case at bar alleges the dissolution of the Guaranty Company, and shows that its assets were a trust fund held by the company for the benefit of its creditors and stockholders. Trusts are always the subject of equity jurisdiction. The rule is well settled that upon the dissolution of a corporation a court of equity will entertain a bill to collect and administer upon the assets which by the dissolution become a trust fund, and the creditors and stockholders are the *cestuis que trustent.*

Bacon v. *Robertson,* 18 How., 480.

Olmstead v. *Distilling & C. F. Co.,* 73 Fed., 44.

And this rule was recognized by the Supreme Court of West Virginia in *Stiles* v. *Laurel Fork Oil & Coal Co.*, 47 W. Va., 838, *supra,* where the court said:

> "*Our statute* (Sec. 59, c. 53, Code) *adopts the principles of courts of equity before its adoption, namely, that for some purposes* THE CORPORATION *still owned its property; that is,— First, for the payment of the creditors; and secondly, for the purpose of giving the residue of its assets to the stockholders.*"

To the same effect, see:

Miller's Adm'x. v. *Newburg Orrel Coal Co.*, 31 W. Va., 836.

Counsel also suggest (Br., 45) that all the stockholders of the Guaranty Company were necessary parties, and that two of them, Bigelow and Pitcher, are citizens of Illinois, and are defendants to the action, and therefore defeat the jurisdiction of the court below. The answer to that position is that the record does not show the *citizenship* of Bigelow and Pitcher, and they are not defendants, and are not indispensable parties. The bill does not make Bigelow and Pitcher defendants, and they have come into the suit only by filing their consent to the relief prayed for in the bill and to the appointment of a receiver. (Rec., 254.) Thus, if they could be regarded as parties at all, they would be ranged with the complainants; under no circumstances can they be ranged with, or treated as defendants. This must be so, since, in view of the consent which they filed, there can be and was no possible controversy between them and complainants. Besides, paragraph 13 of the bill (Rec., 7) expressly alleges that it is

filed not only on behalf of complainants, but also on behalf of all other stockholders. The bill is a class bill and for that reason, also, Bigelow and Pitcher were not necessary parties.

Appellant's counsel (Br., 45) also make the naked suggestion that the contract-holders are indispensable parties, but counsel present neither argument nor authority to support the statement. The contract holders have no interest in the controversy, excepting as creditors, and the bill, which was filed by complainants as stockholders and creditors, was filed not only on behalf of all other stockholders, but also on behalf of all other creditors of the company. (Rec., 7.) The record shows that there are 7,219 creditors (Rec., 223) of the Guaranty Company, and we are aware of no decision which makes them indispensable, or necessary or even proper parties.

In *Bacon* v. *Robertson,* 18 How., 480, 489, a bill was filed by a few stockholders for the appointment of a receiver of a dissolved corporation, for the benefit not only of the complainants, but also of all other stockholders. In speaking of the absence of all the stockholders, the court said (p. 489):

> "The number of parties renders it impracticable to bring all before the court, and therefore the suit may be prosecuted in the form which has been employed in this suit. * * * Our opinion is that the plaintiffs have shown a proper case for equitable interposition by the Circuit Court, and that the decree of that court dismissing the bill is erroneous."

Counsel also say (Br., 51) without arguing, that the Federal Court was without jurisdiction because:

> "A stockholders' or creditors' suit *to wind*

> *up the affairs of a corporation of West Virginia,* dissolved under the provisions of Section 57, Chapter 53 Code of that state can be brought *only* in the State Court which decreed the dissolution. So held in *Stiles* v. *Laurel Fork Oil & Coal Co.*, 47 W. Va., 838." (Italics are appellant's.)

We are not concerned with the question of what court may *dissolve* a corporation. The *Stiles* case did not hold that no court outside of West Virginia may administer the assets of a corporation, even though it be dissolved; and, as counsel themselves show (Br., 17), the bill in the case at bar is for an accounting, and the appointment of a receiver to take charge of the property of the Guaranty Company to the end that it may be distributed to those entitled thereto.

All this could be done without in anyway affecting the corporate existence. The mere fact that a corporation is placed in the hands of a receiver, and its property is all distributed, in no way terminates the corporate existence.

Taylor v. *P. & Reading R. Co.*, 7 Fed., 381.
Bank v. *New York Silk Co.*, 11 Fed., 532.
Johnson v. *Loan Assn.*, 99 Fed., 646.
Ohio & M. Ry. Co. v. *Russell*, 115 Ill., 52, 57.
Bartlett v. *Cicero Light, Heat & Power Co.*, 177 Ill., 68, 74.
Bloomfield R. R. Co. v. *Van Silke*, 107 Ind., 480.
Heath v. *M., K. & T. Co.*, 83 Mo., 617, 621.
Paddock v. *Staley*, 13 Col. App., 363.

In the last mentioned case the court said:

"As we look at it the proceedings were not be-

gun for the purpose of winding up or dissolving the corporation, but simply to obtain an accounting between Thompson and the company and put the possession of the property in the meantime in an officer of the court for management and control pending the final decree. *It has many times been decided that a suit of this description is not a dissolution of the corporate capacity or the powers of its officers,* and does not impair or affect the right of its creditors to bring suit for the enforcement of their claims." (Citing authorities.)

The cases cited by appellant such as *Clark* v. *National Linseed Oil Co.*, 105 Fed., 787 (Br., 96, 97) do not militate against the doctrine just stated. The language quoted by appellant's counsel when read in connection with the facts will make this clear.

The fund which the Federal Court was asked to administer upon was a trust fund, and, as such, could be administered upon in a court of equity under the decisions in

Bacon v. *Robinson*, 18 How., 480.

Miller, Adm'x. v. *Newburg-Orrel Coal Co.*, 31 W. Va., 836.

Stiles v. *Laurel Fork Oil & Coal Co.*, 47 W. Va., 838.

Olmstead v. *Distilling & C. F. Co.*, 73 Fed., 44.

Excepting as to the alleged necessity of making the Royal Trust Company and all stockholders and contract-holders defendants, and the alleged impossibility of procuring jurisdiction over the Guaranty Company because of its dissolution, appellant makes no attack upon the jurisidction of the Federal Court to entertain the bill at bar.

Appellant makes some suggestions that the allegations in the bill could not be proven. Thus, he disputes the truth of the allegation that attachments and other proceedings were threatened by creditors, which, if not prevented, would result in inequitable preferences; but those are questions which affect the equity or merits of the bill, and not the jurisdiction of the Federal Court to entertain it. Whether the equities of the case justified the appointment of a receiver by the Federal Court is not a proper question for review on this appeal. That question could only be reviewed on appeal to the Circuit Court of Appeals. (*McLish* v. *Roff*, 141 U. S., 661; *O'Neal* v. *U. S.*, 190 U. S., 36.)

But by arguing the equities of the bill, appellant concedes that the order appealed from involves the merits, as well as the jurisdiction of the court below, and this lends additional support to our contention that the appeal should be dismissed.

II.

THE RECEIVER APPOINTED IN THE WEST VIRGINIA DISSOLUTION PROCEEDINGS WAS NOT A STATUTORY RECEIVER, BUT A MERE CHANCERY RECEIVER, AND HE WAS NOT INVESTED BY STATUTE WITH THE TITLE TO THE PROPERTY OF THE DISSOLVED CORPORATION, OR MADE ITS LEGAL SUCCESSOR.

Under section 58 of the West Virginia statute, the appointment of a receiver is not mandatory, but is entirely within the equitable discretion of the court, and it does not follow at all that because a decree of dissolution is entered, a re-

ceiver must, or will be appointed. The statute provides that upon dissolution, the court "*may,* on application of a creditors or stockholder, appoint one or more persons to be receivers to take charge of and administer its assets; and *whether such receiver be appointed or not,* may make such orders and decrees and award such injunctions in the cause as justice and equity may require." The West Virginia court did appoint a receiver and did make such order as it thought "justice and equity may require." That order, by its express terms, confined the receiver to West Virginia. (Rec., 53.) He had no power or authority whatsoever, by virtue of the order, beyond that state, to represent or appear for the Guaranty Company, or to collect or receive the assets of the company without the State of West Virginia. All the powers of the receiver so appointed were limited to the order to which we have referred, but appellant contends that the receiver so appointed had certain statutory powers and rights outside of and beyond the order appointing him. Where, we ask, are those statutory powers to be found? There is no statute in West Virginia investing the receiver with any power of any kind outside of that contained in the order of his appointment. There is no statute conveying to him title to the property of the dissolved corporation, or directing or empowering him to institute or defend court proceedings in other states, or to collect the assets of the company, or to enforce its rights and contracts. Moreover, as we have shown, the statute provides that all lawful acts may be done by the dissolved corporation, under its

corporate name, with the same effect as before its dissolution, so far as may be necessary or proper for distributing its property and assets, etc., among those entitled thereto, and the statute expressly provides that suits may be brought against the dissolved corporation in its corporate name.

Prior to the enactment of statutes similar to that of West Virginia, courts of equity exercised jurisdiction and appointed receivers of the assets of dissolved corporations. (*Bacon* v. *Robertson*, 18 How., 480.) And the Supreme Court of West Virginia in the *Stiles* case, *supra* (47 W. Va., 838), also recognized the rule that even without a permissive statute suit could be instituted in a court of equity against a dissolved corporation to enforce demands against it. Receivers so appointed are mere chancery receivers, and the receiver referred to in the West Virginia statute has no more or other powers than a chancery receiver who, under the general powers of equity courts, could have been appointed prior to the enactment of such a statute to administer upon the assets of a dissolved corporation.

In *Great Western Mining and Manufacturing Company* v. *Harris*, 198 U. S., 561 (1905), this court held that a receiver is an officer of the court which appoints him, and that in the absence of some conveyance or statute vesting the property of the debtor in him, he cannot sue in courts of a foreign jurisdiction even upon the order of the court which appointed him. This court there said (p. 576):

> "In *Quincy, etc., R. R. Co.* v. *Humphrey*, 145 U. S., 82, the powers of a receiver were under

consideration, and the following language was quoted with approval. (p. 98.) 'The ordinary chancery receiver such as we have in this case is clothed with no estate in the property, but is a mere custodian of it for the court; and, by special authority, may become an officer of the court to effect a sale of the property, if that be deemed necessary for the benefit of the parties concerned.' There are exceptional cases, such as *Relfe* v. *Rundle*, 103 U. S., 222, in which the entire property of the insolvent company was vested in the Superintendent of Insurance of the state, where his authority did not come from the decree of the court, and his right to sue was maintained.'

There is no provision whatsoever in the West Virginia statute making any receiver appointed in dissolution proceedings a quasi-assignee of the company, or a successor to, or representative of the company. It must follow that a receiver appointed by the court would be but a mere custodian of it for the court and hence would be simply an ordinary chancery receiver within the ruling of this court in *Great Western M. & M. Co.* v. *Harris*, 198 U. S., 561. And that the receiver referred to in the statute is a mere chancery receiver is the more evident since the statute continues the corporate existence for certain purposes, and provides for conveyances by the corporation, and suits against it under the corporate name. Indeed, section 58, which provides for the appointment of a receiver, specifically applies as well to a foreign as to a domestic corporation, and it can scarcely be contended that a receiver appointed in West Virginia of the assets of a foreign corporation doing business in West Virginia, could take possession of all of the property of such foreign corpo-

ration wherever located, and that such West Virginia statute vested in such receiver title to all the property of the foreign corporation. Yet such would be the logical result of counsel's contention.

If, as is contended by appellant, a receiver appointed under section 58 were a statutory receiver, it would not be necessary, in the order of the court appointing him, to give him any powers whatsoever, as the statute would be the measure of his powers. It is highly significant that counsel for appellant were careful to provide in the order entered in the West Virginia court on September 22, 1909, appointing appellant receiver, that he should have authority to institute and prosecute to final judgment and decree legal proceedings which may be necessary to bring into his custody all the property of the Guaranty Company, wherever found, whether in West Virginia, or some other state (Rec., 180); and it is equally significant that the Guaranty Company was, by the same order, directed to execute a deed for all of its property to the appellant, and in event of failure so to do within fifteen days, a Special Commissioner was appointed to execute a deed for and on behalf of the company. On counsel's theory that the last sentence in section 59 of the statute does not apply to the dissolved corporation, if a receiver has been appointed, it would be impossible for the company to make a conveyance, as directed by the court. It is likewise significant that some of the counsel for appellant in this court should have prayed the West Virginia court in Gilliam's petition, on which the appellant was appointed receiver, "that the jurisdiction of the receiver in

this case be enlarged and extended so as to embrace jurisdiction, control, ownership and management of the entire assets, property and funds of the defendant corporation wherever situated." (Rec., 195.) It is singular also that the order required the receiver, appellant, to furnish a $250,000 bond before taking possession of any property "or acting hereunder." (Rec., 181.)

If the title to the Guaranty Company's property was vested in the receiver, by virtue of the statute, and not by virtue of the order appointing him, then it is strange that when appellant was appointed receiver, September 22, 1909, and the first receiver, Black, was removed, the *Guaranty Company* and not *the first receiver* was directed to convey the property to appellant.

This clearly shows that appellant's counsel and the West Virginia court, notwithstandingly the quotation from its alleged opinion found at p. 77 of counsel's brief, must have thought that the Guaranty Company retained title to its property, notwithstanding the appointment of the first receiver, and also the second receiver.

That appellant is an officer of and dependent upon the West Virginia court for his power and authority is further demonstrated by the fact that appellant could not even have been appointed a receiver had it not been for the removal of Mr. Black, the first receiver. If the receiver is not a creature of and officer claiming power under the order of the West Virginia court, then as the statute makes no provision for removal or the appointment of a

successor, that court would have no power to remove him, and it could not have removed Black; and if Black could not be removed then appellant could not be appointed and is not even a receiver. On the other hand, if Black was subject to removal, and to the orders of the West Virginia court, he must have derived his authority from that court, and if the court had the power to remove him he was not a statutory officer of the character covered by *Relfe* v. *Rundle*, 103 U. S., 222, so frequently cited by appellant.

So, in *Bernheimer* v. *Converse*, 206 U. S., 516, also cited by counsel, the court, at p. 534, makes the distinction we are here showing. The court said:

> "But in each and all of these cases it was held that a chancery receiver having no other authority than that which would arise from his appointment as such, could not maintain an action in another jurisdiction. *In this case the statute confers the right upon the receiver,* as a quasi-assignee, and representative of the creditors, and as such vested with the authority to maintain an action."

Why place the extraordinary and unnecessary powers found in the order of September 22, 1909, appointing appellant receiver, and prescribe his duties, if title is conferred upon him by the statute and if his powers and duties are defined by statute?

What we have said applies equally to the order of February 1, 1909, wherein the first receiver, Mr. Black, was appointed by the Circuit Court of Kanawha County. That order, as has already been stated, appoints a receiver of only the property of the Guaranty Company within the jurisdiction of

that court, and authorizes him to take all steps necessary to secure possession of that particular property, and expressly provides that "before entering upon the discharge of his duties" he shall give a bond, conditioned according to law. (Rec., 53.)

We must not lose sight of the fact that the West Virginia court was not bound to appoint a receiver, and that whether it appointed a receiver or not, it could make such orders as it deemed equitable, and could appoint "one or more persons to be receivers." The court might have appointed one receiver to take charge of some particular property, and might either have appointed some other receiver, or no receiver at all of other property; and if that be so, it follows that the title must remain in the company until it passes to a receiver.

The statute does not even purport to define any of the duties, obligations or rights of a receiver so appointed. The entire theory of sections 57, 58 and 59 is to provide for a judicial dissolution of a corporation, and also to empower a court, *provided it sees fit so to do,* to appoint one or more chancery receivers, either when a corporation is dissolved, or before its dissolution; and section 59 provides that upon the dissolution of a corporation its assets shall be applied towards the payment of its debts and the expenses of winding up its affairs, the surplus to be distributed among the stockholders. And then, in order that the decree of dissolution should not absolutely deprive the corporation of the right to further exercise any corporate power whatsoever, the legislature provided that, insofar as was necessary to

effectuate a proper distribution of the corporate assets and the protection of its rights, certain designated corporate powers should be continued. No new rights or powers were created by the act, except that a court of chancery was given the power to dissolve a corporation, and certain corporate rights were reserved to the dissolved company. So far as it affects receivers, the statute confers no rights other than a court of equity already inherently possessed in case of dissolved corporations, or other trust estates.

In *Relfe* v. *Rundle*, 103 U. S., 222, principally relied on by appellant, it was held that the Missouri State Superintendent of Insurance, as the statutory successor of a dissolved insurance company organized under the laws of Missouri, could recover funds of the company in Louisiana, as against policy holders in that state who were seeking to retain the funds for the prior benefit of Louisiana creditors. The decision was absolutely and clearly based on the ground that the Superintendent of Insurance was not an officer of the Missouri court, but derived his authority from the Missouri statute. And the decision could not well have been otherwise.

Section 6043 of the Revised Statutes of Missouri, as set forth in the report of that case, provides that:

> "Upon the rendition of a final judgment dissolving a company or declaring it insolvent, all the assets of such company shall vest in fee simple and absolutely in the superintendent of the insurance department of this State, and his successor or successors in office, who shall hold and dispose of the same for the use and benefit of

> the creditors and policyholders of such company, and such other persons as may be interested in such assets."

It was with reference to such a statute that this court said, at p. 225:

> "Relfe is not an officer of the Missouri State Court, but the person designated by law to take the property of any dissolved life insurance corporation of that State, and hold and dispose of it in trust for the use and benefit of creditors and other parties interested. * * * He appeared in Louisiana not by virtue of any appointment from the court, but as the statutory successor of a corporation which the court had in a legitimate way dissolved and put out of existence."

By the express terms of the Missouri statute, title to the property, immediately upon dissolution, vests in the superintendent of insurance. No decree of any court is required for that purpose. The West Virginia statute makes no reference to the title of the property of a dissolved corporation, and as we have already said does not even require the appointment of a receiver, but leaves such appointment in the court's discretion, and it further provides that, whether the court appoints a receiver or not, it may make such orders as appear equitable. If the West Virginia court was under no obligation to appoint a receiver, but could leave the property and assets of the company in the possession and control of its Board of Directors, it must also be true that, in carrying out the powers conferred by the statute on that court to make such orders and decrees as equity may require, the court could also appoint a receiver with

limited authority, or a receiver for a particular portion of the property of a dissolved company, or separate receivers for separate parts of the assets, or limit the jurisdiction of its receiver either as to property, or as to territory.

It thus clearly appears that, unlike the Missouri statute, the West Virginia statute provides for no change in the title of a corporation upon the rendition of a decree dissolving the corporation. It is equally clear that if the title to the property of a corporation dissolved by a West Virginia court is changed at all, it must be either by a conveyance from that corporation, or by some decree of court. It cannot be pretended that the title to the property of the Guaranty Company was divested unless and until an order was entered by the West Virginia court appointing a receiver, and a conveyance made to the receiver; and neither the statute nor the order of February 1, 1909, appointing Black receiver even remotely undertake to change the title to any of the company's property. Whatever powers receiver Black had and whatever property rights were vested in him as such receiver, must necessarily be found from the order appointing him.

Nor could the deed of October 9, 1909, (Rec., 136), executed by a special commissioner long after the acquirement of jurisdiction by the United States Circuit Court, and long after the conveyance by deed pursuant to the order of that court, on February 3, 1909, by the Guaranty Company through its president and secretary, of all its property to this appellee as receiver (Rec., 256), be of any avail to affect the possession, custody or control of such prop-

erty already held by appellee under the orders of the United States Circuit Court.

Relfe v. *Rundle* is further distinguishable from the case at bar in that the laws of Missouri did not permit the dissolved company to have any existence after dissolution, or to use its seal, or sue or be sued, etc., Moreover, that case involved an attempt on the part of certain policyholders to secure for themselves preferential rights, whereas, in the case at bar an equitable distribution among all creditors of the Guaranty Company's assets is sought.

Parsons v. *Charter Oak Life Ins. Co.*, 31 Fed., 305, decided by District Judge Shiras, also relied on by appellant, was another case in which an insolvent insurance company was involved, and an effort made by certain policyholders to procure preferential payments. The insurance company was organized under the laws of Connecticut, which *required* the insurance commissioner to petition the court for the appointment of a receiver of an insolvent insurance company, and for the cancellation of its charter, and the court held that neither the statute of Iowa, where the litigation was begun, nor those of Connecticut, the domicile of the company, permitted of such priority. Under the Connecticut statute (Gen. Stat. Conn. 1888, Sec. 2869), it was mandatory upon the court to appoint a receiver where the assets were less than three-fourths of its liabilities.

Moreover, under the Connecticut law, after the dissolution and the appointment of a receiver, the insurance company could no longer sue or be sued, and it had no continued corporate existence.

Like comment applies to *Fry* v. *Charter Oak Life Ins. Co.*, 31 Fed., 197, cited, but not quoted from in appellant's brief.

In *Pendleton* v. *Russell*, 144 U. S., 640, cited by appellant, an insurance company organized under the laws of New York was dissolved under the New York statute by a proceeding brought on behalf of the people, by the attorney general of that state. The New York statute did not, as in the present case, authorize the use of the corporate name or corporate seal, or permit the institution of suits by or against a dissolved insurance company, or permit the continued corporate existence for any period whatsoever, as does the West Virginia statute. This distinction applies to all the cases that arose in New York, to many of which counsel for appellant refer.

So, *American National Bank* v. *National Benefit & Casualty Company*, 70 Fed., 420, cited by appellant, is another case of an insurance company which had been dissolved by a proceeding instituted by the attorney general of Wisconsin, where the company was organized. A decree of dissolution was entered and a receiver was appointed. Thereafter, a suit was begun in Colorado by a creditor seeking to have certain funds in that state applied in priority to his claim, and the court denied such relief. Under the Wisconsin statute, the existence of the insurance company is not continued for any purpose after its dissolution, and the statute makes it mandatory that its affairs shall be wound up under the direction of the receiver.

So, also, in *Nelson* v. *Hubbard*, 96 Ala., 238, cited

by appellant, the Alabama statute expressly provides that upon a decree of dissolution, the chancellor "*shall* appoint a receiver of all the property and assets of the corporation," and the statute therein further provides: "The chancellor *shall* direct the receiver to collect by suit or otherwise all the debts due the corporation, and sell property, real or personal, belonging to the corporation, and how he shall make the title thereto to the purchaser." This statute is mandatory as to the appointment of a receiver, and does not leave to the court any discretion as to the powers which shall be granted to such receiver so appointed.

In *Groom* v. *Mortimer Land Co.*, 192 Fed., 849, also relied on by appellant, a New Jersey corporation was voluntarily dissolved pursuant to the laws of that State, with the consent of its stockholders. The New Jersey statute made the directors of the dissolved company its trustees in liquidation, and also provided for the appointment of a receiver to liquidate the company in lieu of the trustees. A receiver was appointed by the New Jersey court upon the application of the trustees, and a deed of conveyance was made to the receiver by the corporation and its statutory liquidating trustees, so that title to all the assets was vested in the receiver. *After* all these steps had been taken, one of the stockholders who had consented to the dissolution proceedings, filed a bill against the company in a Texas State Court "for the winding up of the defendant corporation" and other relief. The Circuit Court of Appeals held that notwithstanding the dissolution of the company, it nevertheless could remove

the case to the Federal Court, inasmuch as the New Jersey statute perpetuated the corporative existence of a dissolved company "for the purpose of prosecuting or defending suits by or against them." On demurrer to the bill the court held that the bill would not lie for the following reasons: it was not filed by a creditor, but by a stockholder who had consented to the company being wound up under the New Jersey laws; the title to the Texas property had already been vested in the New Jersey receiver; and the receiver, under the New Jersey statutes, was more than an officer of the court appointing him, but was an alternative agency *designated by the State statute* as trustee to wind up the affairs of the dissolved company.

Counsel for appellant also refer to the case of *Swing* v. *Bentley & Gerwig Furniture Co.*, 45 W. Va., 283, 285, as though it involved the construction of the West Virginia statute. The language quoted by counsel refers only to the powers which receivers will be permitted to exercise in foreign states on the principle of comity.

But we need not look to the law of West Virginia to determine what this principle of comity is, inasmuch as this court has settled that question in *Great Western Mining Co.* v. *Harris*, 198 U. S., 561, *supra.*

Counsel's entire argument must fall unless the first receiver, Mr. Black, had title to the property in controversy. If he had no title, then it is clear that the title vested in appellee on February 1, 1909, by virtue of his appointment as receiver and the Guaranty Company's conveyance to him. Manifestly,

the order entered eight months thereafter by the Circuit Court of Kanawha County, appointing appellant receiver, could have no *ex post facto* effect.

In order to support the contention that title vested in receiver Black on February 1, 1909, appellant is driven to rely upon the theory that Black was a receiver in whom title was vested by statute and not by order of court. Indeed, counsel's entire argument is predicated upon that theory, and in view of the West Virginia statute it is somewhat surprising that counsel should expressly adopt (Br., 59) the definition of statutory receivers found in Alderson on Receivers, p. 4, to the effect that they are receivers whose powers are derived from special statutory provisions, *to which statutory provisions they must look for guidance in the performance of their duties*. Here, we submit, appellant will look in vain for statutory provisions to guide him.

III.

EVEN IF THE WEST VIRGINIA RECEIVER WERE A STATUTORY RECEIVER, NEVERTHELESS HE ACQUIRED NO TITLE TO PROPERTY BEYOND THE JURISDICTION OF THE COURT APPOINTING HIM, INASMUCH AS THE ORDER APPOINTING HIM EXPRESSLY LIMITED HIS AUTHORITY TO THAT JURISDICTION.

Counsel argue (Br., 76) that the West Virginia court had no power, when it appointed its first receiver, to limit the receivership to property within the jurisdiction of that court. The argument of counsel, though not entirely clear to us, seems to be based, at least in part, upon the theory that the limitation upon the receiver's powers was not to the ad-

vantage of the company's creditors, and should therefore have been omitted from the order. We shall not waste time in answering such a contention, as we are not here dealing with the advisability, or propriety of the restriction. That the court had the power to appoint a receiver of only the property within the jurisdiction of the court, is we believe, perfectly clear. Section 58 of the statute provides that the court, when decreeing a dissolution, whether a receiver be appointed or not, "may make such orders and decrees and award such injunctions in the cause as justice and equity may require." Thus, it is as clear as language can make it that the court had all the powers of a court of chancery, and could decree a dissolution, and, in its discretion, appoint no receiver, or appoint one or more persons to be receivers, and under any and all circumstances the court could enter such orders as, in its judgment, justice and equity might require. Notwithstanding these unlimited powers of the court, counsel without argument or the citation of a single authority, boldly assert that the limitation of the receiver's authority was, in effect, an amendment of the statute and beyond the power of the court. We believe that the language of Circuit Judge Kohlsaat, upon this point completely answers counsel's contention, and that (Rec., 286) "it would be a strained construction of the Act to hold that the receiver, being appointed, could shake off the conditions upon which he secured the appointment and lay claim to authority expressly withheld from him by the order. It could, with equal justification, be claimed that the order was either good as entered, or void *in toto*."

The West Virginia court having had the power to appoint a receiver of only the property located within its own jurisdiction, it must follow that even if the receiver so appointed were a statutory receiver, the title to property beyond the jurisdiction of the West Virginia court did not pass to the receiver; and this brings us to a consideration of the legal situs of the property.

IV.

THE LEGAL SITUS OF THE PROPERTY HERE INVOLVED IS IN ILLINOIS AND NOT IN WEST VIRGINIA. AS THE WEST VIRGINIA COURT APPOINTED A RECEIVER OF ONLY THE PROPERTY WITHIN ITS JURISDICTION IT FOLLOWS THAT SUCH RECEIVER COULD ACQUIRE NO TITLE TO ANY OF THE PROPERTY IN CONTROVERSY.

The record shows that the assets of the Guaranty Company consist of cash, securities, bills receivable, loans, certificates of deposit, bonds, accounts receivable, notes, mortgages, certificates of stock and "other assets." (Rec., 26, 101-105, 142, 256, 263, 264.) This is practically conceded by counsel. (Br., 66, 75.) Counsel, however, claim (Br., 66, 75) that all the assets were personalty and intangible chattels. The report of appellee (Rec., 262-265) shows that he filed an itemized and detailed schedule of assets of liabilities, and while the schedule itself does not appear in the transcript, yet the order appointing appellee receiver made him receiver of all the property of the Guaranty Company "real, personal and mixed" (Rec., 57) and the deed executed by the company to appellee transferred, *inter alia*, all its property, "real, personal and

mixed" (Rec., 256), and in like manner an order entered in the case at bar on February 4, 1909, referring the cause to a master in chancery to take testimony to enable appellee to ascertain the character and locality of property belonging to the Guaranty Company covers "real" property. (Rec., 257.)

Both on the record, therefore, as well as from knowledge of the actual facts, we are constrained to dispute the statement of counsel that the property here involved consists only of personalty and intangible chattels. That the situs of real estate is in the state where located will not be disputed, and the mere fact that the property in controversy includes real estate is, of itself, a sufficient and complete answer to the argument of counsel (Br., 66) that "all the property and assets of such Guaranty Company at the time of such appointment (of a receiver) were within the jurisdiction of such Circuit Court of Kanawha County."

It is not disputed by appellant that the notes, bonds, certificates of deposit, mortgages, certificates of stock and securities belonging to the Guaranty Company were, at the time that the West Virginia receiver was appointed, and since then always have been, held at the Chicago office of the Guaranty Company.

The Company's charter expressly provided that it "shall keep its principal office or place of business at Chicago, in the County of Cook and State of Illinois" (Rec., 149), and all the company's business was transacted from and its personal property was kept in that office. (Rec., 28.) The bill of complaint filed

in West Virginia (Rec., 28) shows—and this is nowhere disputed—"that all of the property and effects of said Guaranty Company are in said City of Chicago, except a few cash balances in little more than nominal amounts due to said Guaranty Company from about fifteen banks outside of Chicago, which have been collecting agents of said Guaranty Company." Our contention is emphasized by the fact that at a stockholders' meeting held in Chicago January 12, 1898, the company's name was changed from "The American Investment Guaranty Company" to "American Guaranty Company of Chicago." (Rec., 34.)

The record also shows that at the time of its dissolution the Guaranty Company had loaned to various of its contract holders an amount aggregating over four hundred thousand dollars, all of which loans are evidenced by notes of contract holders, which notes are payable (Rec., 63), by their express terms at the office of the Guaranty Company in the City of Chicago. (Rec., 75.)

From the condensed statement of assets (Rec., 263) it appears that among them were many hundred thousand dollars of simple contract debts, and the situs of such debts is, according to the decision of this court, at the domicile of the debtors and not of the creditor, for purposes of administration.

In *Wyman* v. *Halstead*, 109 U. S., 654, 656, this court said:

> "The general rule of law is well settled that for the purpose of founding administration all simple contract debts are assets at the domi-

> cile of the debtor, and that the locality of such a debt for this purpose is not effected by a bill of exchange, or a promissory note having been given for it, because the bill or note does not alter the nature of the debt, but is merely evidence of it, and therefore the debt is assets where the debtor lives, without regard to the place where the instrument is found or payable." (Citing many authorities.)

Counsel cite and rely (Br., 68) on *Railway Co.* v. *Sturm*, 174 U. S., 710, as laying down a doctrine different from that announced in *Wyman* v. *Halstead* (*supra*), but a reading of the Sturm case shows that the court reaffirmed the doctrine of the Wyman case and again held that for the purpose of administration all simple contract debts are assets at the debtor's domicile and not at the domicile of the creditor. That case also recognizes a distinction in the doctrine when applied to taxation and refers to *Kirtland* v. *Hotchkiss*, 100 U. S., 491, relied on by appellant (Br., 67, 68), as coming within that class. In *Blackstone* v. *Miller*, 188 U. S., 189, the court held that for purposes of taxation there is no distinction between the situs of a tangible chattle and a debt due from a bank because of money deposited therein. In *State Board of Assessors* v. *Comptoir National D'Escompte*, 191 U. S., 388, the court held that a state could tax property in the shape of securities evidenced by notes or obligations held within that state for purposes of collection by an agent of a non-resident owner. These cases teach that for purposes of taxation, intangible property, such as notes, credits, etc., may be taxed either at the place where such debts are owing, or the evidences thereof are lo-

cated, or at the place of the owner of such assets, or at both places.

These cases demonstrate that as a matter of fact a debt is *actually* located and constitute assets where the debtor resides, even though, by a fiction of law, may also be taxed at the domicile of the owner. In other words, while a debt, like tangible personal property may be taxed at other places, it, like tangible personal property, has its actual *situs* at the place where it must be recovered. In the present case, if instead of the debts involved there had been, for example, cattle in Illinois belonging to the corporation, no one would contend for a minute that the West Virginia court had assumed jurisdiction of the same in the face of its order limiting its jurisdiction to assets in West Virginia. But the debts here, are, under the doctrine of the cases, *supra,* no more assets actually located in West Virginia than the cattle in the suppositious case, and the debts are, to the same extent, expressly excluded by the order of the West Virginia court as if they were in their nature tangible.

> "When logic and policy of a state (here the West Virginia order, as interpreted by appellant) conflict with a fiction * * * the fiction must give way." (*Blackstone* v. *Miller, supra.*)

In *New England Mutual Life Ins. Co.* v. *Woodworth,* 111 U. S., 138, the court again reaffirmed the doctrine of *Wyman* v. *Halstead* (*supra*), and held that a policy of insurance, not under seal, is, for the purpose of founding administration, an asset where the debtor resides. That case is also an authority for the statement that debts cannot be collected by

an administrator appointed in a state foreign to that where the debtor resides or can be found, and for that reason the situs of a simple contract debt is that of the debtor. So, in the case at bar, all the notes evidencing loans by the Guaranty Company to its contract holders are secured by the deposit of the contracts of the Guaranty Company, all of which pledged contracts were held at the Chicago office of the Guaranty Company. (Rec., 75, 26.)

In *Buck* v. *Beach*, 206 U. S., 392, 403, the court recognized the rule that where bonds are a part of an estate administration could be had at the place where they are found, regardless of the location of either the debtor or the creditor. The funds here in controversy include several hundred thousand dollars of bonds. (Rec., 101.) In *Selliger* v. *Kentucky*, 213 U. S., 200, 204, the court held that "bonds can be taxed where they are permanently kept."

Included among the assets in the possession of the federal receiver are, also, as admitted by counsel (Br., p. 75), various certificates of stock. In *Jellenik* v. *Huron Copper Mining Co.*, 177 U. S., 1, the court laid down the rule that the situs of certificates of stock may, for purposes of taxation, be in one place, and yet they may have a different situs where a question of ownership is involved. In the latter case, the court said that the certificates of stock are only evidence of ownership, and that the property represented by the certificates will be deemed to be located at the domicile of the corporation.

There is no claim made by appellant that the certificates of stock here in controversy were issued by West Virginia corporations, and it is clear there-

fore, that the certificates in controversy were not within the jurisdiction of the West Virginia court.

In view of the character and location of the property here involved and of the decisions *supra*, it is plain that the West Virginia receiver, whose powers were expressly limited to the property within the jurisdiction of the court appointing him, had absolutely no right to claim any of the property in question, and that it vested in appellee by virtue of his appointment as receiver, and the Guaranty Company's deed of assignment to him.

V.

APPELLANT'S CHARGE OF BAD FAITH IS WITHOUT ANY JUSTIFICATION IN FACT, AND IS WHOLLY IMMATERIAL, AS A MATTER OF LAW.

Counsel complain because the complainants in the West Virginia suit were not content to have all the assets of the Guaranty Company administered by a receiver appointed by a West Virginia state court, but sought such administration by a receiver appointed by the Federal Court, and counsel draw inferences therefrom and discuss the matter "in a way which," they themselves say, is "distasteful."

It is, we believe, a sufficient answer to this complaint to say that the motive which actuates a litigant in selecting a particular forum, is wholly immaterial. The test of the Federal Court jurisdiction is not dependent upon the motive of the party invoking it.

In *Blair* v. *Chicago,* 201 U. S., 400, in disposing of a similar contention, this court said (448):

> "As to the conspiracy to get the case into the Federal Court with a view to the decision of the rights of the parties therein, we are not aware of any principle which prevents the parties having the requisite citizenship and a justiciable demand from seeking the federal courts for redress, if such be their choice of a forum in which to have the contested rights litigated. Having a proper cause of action and the requisite diversity of citizenship confers jurisdiction upon the federal courts, and in such cases the motive of the creditor in seeking federal jurisdiction is immaterial." (Citing authorities.)

In that case, also, as in the instant case, complaint was made that various court proceedings were carried on pursuant to a pre-arranged plan. In speaking of that objection the court said (p. 449):

> "It is true that the judgments were taken and the receivers appointed on the same day, and it is quite likely that the receiverships were in view when the judgments were taken, and that preparations had been made in that direction, but we perceive in this no legal objection to the jurisdiction of the court."

In *South Dakota* v. *North Carolina,* 192 U. S., 286, the court, at p. 311, approvingly quoted the following language of Mr. Justice Brown, in the opinion in *Dickerman* v. *Northern Trust Co.,* 176 U S., 181:

> "If the law concerned itself with the motives of parties, new complications would be introduced into suits which might seriously obscure their real merits."

In *In Re Metropolitan Railway Receivership,* 208 U. S., the court said (pp. 107, 111):

> "That the parties preferred to take the subject matter of the litigation into the federal courts, instead of proceeding in one of the courts of the state is not wrongful. So long as no improper act was done by which the jurisdiction of the Federal Court attached the motive for bringing the suit there is unimportant." (Citing authorities.)

Counsel's entire charge of bad faith is predicated upon the fact that complainants filed a bill in the West Virginia court for the purpose of winding up the company and praying for the appointment of a receiver, and in fact procured an order which limited the receiver's powers to property located within West Virginia, and thereafter commenced proceedings in the Federal Court in Illinois for the purpose of administering that part of the assets of the Guaranty Company located within the jurisdiction of that court.

It cannot even be claimed that the West Virginia court was not fully advised of complainant's purpose. An answer, sworn to by two persons, has been filed to the intervening petition of appellant. (Rec., 216-226; especially, p. 217.) No reply to, or denial of that answer has been filed by appellant or by any other person. That answer explicitly and unequivocally sets up that on February 1, when the West Virginia court entered the order appointing V. L. Black receiver, the attention of the court was expressly directed to the fact, not only that the order appointing the West Virginia receiver confined his power to that state, but that the parties contemplated and had planned at once to follow up the West Virginia proceedings with an application

to the Federal Court, where the property of the Guaranty Company and also its principal office were located, for the appointment of a receiver by that court. This record shows that the West Virginia court had full notice of the plan actually pursued, before he entered the order of February 1, and counsel so concede. (Br., 53.)

We know of no principle or authority, and counsel have referred us to none, which rendered such a plan illegal, or even questionable. It not being necessary that any receiver he appointed by the West Virginia court no complaint can be made because one was appointed with only limited powers. It is evident that inasmuch as the West Virginia statute created no statutory receiver and gave no receiver title to the property of the Guaranty Company, it was absolutely essential that appropriate proceedings be instituted in the place where the company's assets were actually located and could be procured for administration purposes.

Inasmuch as the assets were located within the jurisdiction of the Federal Court sitting in Illinois, it was entirely proper, and indeed necessary, in order to procure an equitable distribution of the company's assets, that a receiver be appointed in that jurisdiction; and as the amount involved was sufficient, and the requisite diversity of citizenship *bona fide* existed, it was proper to invoke the jurisdiction of the Federal Court.

When the Federal Court, on February 2, 1909, appointed appellee receiver, there was no prior order of any court appointing a receiver of any property of the Guaranty Company outside of West Vir-

ginia, and receiver Black would have been powerless, and if the Federal Court had not then acted, the property of the company would have remained in the control of a dissolved corporation, and subject to attempts to procure preferences, and subject to attachments, disintegration and destruction, by numerous adverse and conflicting proceedings.

On February 2, 1909, there was and could be no conflict between the order of the West Virginia court entered on February 1, 1909, and that entered in the Federal Court on February 2. If the West Virginia court had taken no further action, the present conflict would never have arisen, and it is clear that the West Virginia court could not, by any order entered after the Federal Court had taken jurisdiction, interfere with, or deprive it of the jurisdiction which it had already taken by an order entered before the West Virginia court acted.

When, on September 22, 1909, the West Virginia court entered an order attempting to appoint appellant receiver of all the property of the Guaranty Company, no matter where located, the Federal Court had already for more than eight months been in possession thereof. During all that time the Federal Court had been continuously administering upon the estate, had entered many important and far-reaching orders, and disposed of a sharp controversy with the Royal Trust Company; besides 7,219 claims were filed with the Master in Chancery, pursuant to the order of the Federal Court, which are in course of adjudication by that court. The cash and securities in possession of appellee, as shown by the in-

ventory filed by him on March 26, 1909, were $1,409,234.07. (Tr., 263.)

It is noteworthy that among the claims so filed were claims filed on August 24, 28, and September 1, 1909 (Rec., 237), by W. R. Gilliam, upon whose petition to the West Virginia court appellant was appointed receiver on September 22. By the filing of those claims the jurisdiction of the Federal Court was expressly recognized by Gilliam. And, *mirabile dictu*, the claims of Gilliam were filed in the Federal Court at Chicago by Messrs. F. W. Houghton and George B. Edgerton (Rec., 237), and those same gentlemen, together with Messrs. Chilton, MacCorkle and Chilton appeared for Gilliam on the application in the West Virginia court for the removal of Black and the appointment of Keatley on September 22, 1909 (Rec., 196). And all of those learned lawyers appear also in this court on behalf of appellant Keatley.

In fact, of the 86 claimants referred to in the Gilliam petition in the West Virginia court, 69 had already filed their claims with the Master in Chancery of the Federal Court at Chicago. (Rec., 224.) And none of those 86 claimants, nor even Gilliam, was, or is a citizen of West Virginia. And the total surrender value of all West Virginia contracts is only $9,751.44. (Rec., 28.)

Eight months before the West Virginia court appointed appellant, or authorized any receiver to take possession of any property outside of the jurisdiction of that court, the Federal Court had already taken jurisdiction over the *res*, and the court which has first taken jurisdiction over the *res* will

maintain such jurisdiction as against any other court asserting jurisdiction by virtue of a subsequent proceeding. (*Farmers Loan & Trust Co.* v. *Lake St. El. R. R. Co.*, 177 U. S., 51.)

If, as we contend, the West Virginia statutes do not provide for a statutory receiver, and if, as appellant claims, the situs of the property was within the jurisdiction of the West Virginia court, then there would be involved merely a question of conflict of jurisdiction, that is to say, even assuming that the West Virginia court had directed a receiver in Chancery to take possession of the property, such fact could not oust another court of *jurisdiction* to take the property.

The present case is very much like *In re Cleland*, 218 U. S., 120, where a claimant sought to attack the jurisdiction of the Federal Court sitting in the Eastern District of Michigan which, in a consent proceeding, had appointed a receiver of a building association and was administering upon its estate. There, as here, in the language of the court, the petitioner sought "to reduce all the proceedings to naught. * * * His pecuniary interest in doing so is infinitessimal, even if not actually contravened. It cannot be believed the motive for the petition is such as to appeal to the discretion of the court."

It is respectfully submitted that there is no merit in the appeal, and that in the event that appellee's motion to dismiss the appeal be disallowed, the order appealed from should be affirmed.

Respectfully submitted,

LEVY MAYER,
Attorney for Edwin A. Potter, Receiver.

CHICAGO, December 4, 1912.

Office Supreme Court, U. S.
FILED.
DEC 14 1912
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 84.

EDWIN M. KEATLEY, AS RECEIVER OF AMERICAN GUARANTY COMPANY OF CHICAGO, UNDER APPOINTMENT OF THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA, APPELLANT,

vs.

CARRIE REBECCA FUREY, AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF CHARLES LA TOUR FUREY, DECEASED, AND ALSO IN HER OWN RIGHT; EDWIN A. POTTER, AS RECEIVER OF THE AMERICAN GUARANTY COMPANY OF CHICAGO, BY APPOINTMENT OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, ET AL., APPELLEES.

THE WEST VIRGINIA STATUTES.

LEVY MAYER,
Attorney for Appellee Edwin A. Potter, as Receiver of the American Guaranty Company of Chicago.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 84.

EDWIN M. KEATLEY, AS RECEIVER OF AMERICAN GUARANTY COMPANY OF CHICAGO, UNDER APPOINTMENT OF THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA, APPELLANT,

vs.

CARRIE REBECCA FUREY, AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF CHARLES LA TOUR FUREY, DECEASED, AND ALSO IN HER OWN RIGHT; EDWIN A. POTTER, AS RECEIVER OF THE AMERICAN GUARANTY COMPANY OF CHICAGO, BY APPOINTMENT OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, ET AL., APPELLEES.

THE WEST VIRGINIA STATUTES.

The bill filed in the Circuit Court of Kanawha County, West Virginia, is on pages 23 to 28 of the printed record. Paragraph 4 of that bill (R., 24-25), gives the name, the date of the charter, the capital stock, the purposes for which organized,

and the period of existence of the Guaranty Company, and concludes thus (R., 25) "that a true and correct copy of said certificate of incorporation *and of all amendments thereto,* is hereto attached as Exhibit 'B' and by express reference thereto made part hereof."

Exhibit "B" (R., 32-36) is the original charter of July 14, 1892, and the amendment of January 12, 1898, and the amendment of April 27, 1901. The charter provides (R., 33) thus: "Which corporation shall keep its principal office or place of business at Chicago, in the county of Cook and State of Illinois, and is to expire on the first day of July, A. D. 1942." (The printed record at page 23, by a typographical mistake, reads "1904." This same Exhibit "B" appears again in the record, pages 248 to 252, and on page 249, eighth line, the correct date, "1942," is given.)

The amendment of January 12, 1898, to the charter was adopted, as the amendment recites (R., 34), "at the annual meeting of the stockholders of The American Investment Guaranty Company held at room 54, Brother Jonathan Building, Numbers 2 and 4 Sherman street, Chicago, on the twelfth day of January, 1898." At that meeting, and by amendment of the charter then adopted, "the name of the corporation shall be American Guaranty Company of Chicago, instead of The American Investment Guaranty Company" (R., 34).

"An exhibit (to the bill) prevails as against an inconsistent averment in the bill" (16 Cyc. of Law and Procedure, 237, and the cases there cited).

In the reply brief of counsel for appellant occurs the following (pp. 9 and 10):

> "Counsel for appellee is asked to answer the following question: If, as stated on page 42 of counsel's brief, 'The Company's charter expressly provided that it shall keep its principal office or place of business in the city of Chicago, in the County of Cook, and State of Illinois,' why did they allege in the bill filed in West Virginia,
>
> '5. That the principal office of said Guaranty Company ever since its incorporation always has been, and is, in the city of Charleston, in said Kanawha County, in the State of West Virginia'? (Rec., p. 25).
>
> "For fear counsel shall not answer this question we suggest that the reason is found in the provisions of section 57, which provides that those stockholders, of not less than one-third in interest, of the corporation, who *desire to wind up its affairs*, may apply by a bill in chancery to the circuit court of the county in which the *principal office* or place of business is situated.
>
> "Which is the truth?
>
> "To give that court jurisdiction these two things were necessary: 1st, to apply to the court in the *county* where the *principal office* was situated, and, 2d, they must desire to wind up the affairs of the corporation." (Italics are theirs.)

The West Virginia Statutes.

Sections 57, 58, and 59 of chapter 53 of the Code of West Virginia are printed in full on pages 5 to 7 of appellees' motion to dismiss the appeal.

Section 57 provides:

> "If not less than one-third in interest of the stockholders of a corporation desire to wind up its affairs they may apply by a bill in chancery *to the circuit court of the county in which the principal office or place of business of such corporation is situated,*" etc.

Section 58 provides:

> "When a corporation expires, or is dissolved, or before its expiration or dissolution, upon sufficient cause being shown therefor, *such court* (circuit court of the county in which the principal office or place of business of such corporation is situated), as is mentioned in the preceding section, may, on application of a creditor or stockholder, appoint one or more persons to be receivers," etc.

Section 59 provides:

> "When the corporation shall expire or be dissolved its property and assets shall, under the order and direction of the board of directors then in office, or receiver or receivers appointed for the purpose by *such circuit court* (of the county in which the principal office or place of business of said

corporation is situated) as is mentioned in the fifty-seventh section of this chapter, be subject to the payment of the liabilities of the corporation." etc.

The Code, chapter 54, section 23, as amended in 1901, provides:

> "The stockholders or directors of any corporation formed under or accepting the provisions of this chapter may hold meetings for the transaction of the lawful business of the corporation, including the first general meeting for purposes of organization, and *keep the principal office of such corporation either in or out of this state.* * * * *The principal office of a corporation shall be taken and deemed to be at the place fixed by the agreement and the certificate of incorporation, or as located according to the provisions of section twenty-one of this chapter.* * * *"

Section 21, above referred to, provides for a change of the place of its principal office by a stockholders' meeting at which a majority shall be present, "provided that notice be given by advertisement published at least two weeks before such action in some newspaper of general circulation *printed in the county wherein the principal office of such corporation is located, if such office be within this state; and if such office be not within this state, then in some newspaper printed at the capital of this state*, of the intention to offer such resolution * * *."

The same section, which refers to an increase of capital stock, provides further, thus:

> "But on such increase *a resident corporation* shall not pay less than five dollars and *a non-resident corporation* shall not pay less than ten dollars."

The Code, chapter 54, as amended in 1887, which has reference to the appointment of an attorney to accept service of process, provides:

> "Every such corporation having its principal office or place of business in this state shall, within thirty days after organization, by power of attorney duly executed, appoint some person *residing in the county in this state wherein its business is conducted*, to accept service. * * * Every such corporation *having its principal office or place of business outside this state* shall, within thirty days after organizing, by power of attorney duly executed appoint *some person residing in this state to accept service* on behalf of said corporation. * * * The said power of attorney shall be recorded in the office of the clerk of the county court of the county *in which the attorney resides*, and filed and recorded in the office of the Secretary of State * * *."

By the Code, chapter 32, section 124, as amended in 1905, the statute in making a classification for the purposes of taxation provides:

> "* * * Domestic corporations are subdivided into two classes, resident and non-resident. A resident corporation is a do-

mestic corporation whose principal place of business and chief works (if it have chief works) are located within this state, and *a non-resident corporation is a domestic corporation whose principal place of business or chief works is located without this state* * * *."

The laws above quoted can be conveniently found on pages 23, 24, 33, 34, and 152 of an official pamphlet entitled "General Corporation Laws of West Virginia," collated by C. W. Swisher, Secretary of State, published at Charleston in 1905.

The order of February 1, 1909, entered by the West Virginia court (R., 53) appointing Black receiver contains no finding either of jurisdiction or as to the principal office or place of business of the Guaranty Company, or its location.

In the order of September 22, 1909 (R., 179-182), entered by the West Virginia court, which removed Black and appointed Keatley receiver and enlarged the February 1, 1909, order from a receivership of the property in West Virginia to a receivership within and without the State of West Virginia, and also ordered the Guaranty Company to make a deed of conveyance to Keatley, there was no finding of jurisdiction and no finding with reference to the principal office or place of business of the Guaranty Company, or its location.

In the petition filed in the West Virginia court by W. R. Gilliam (R., 183-197), and upon which

petition the order of September 22, 1909, appointing Keatley receiver was entered, it is alleged (R., 183) "that the principal administrative offices of said defendant company have always been in the city of Chicago, in the State of Illinois, and upon information and belief, that all the officers and stockholders of said defendant *have continuously resided at and have always done business for said company from said city of Chicago.*"

All the property and effects of the Guaranty Company were situated in the city of Chicago (R., 6, 130).

In view of the foregoing, I reply to the question which counsel for appellant have asked me to answer, that the West Virginia court was without jurisdiction to appoint Black on February 1, 1909, or Keatley on September 22, 1909, because, under the statutes, the circuit court of Kanawha county was without jurisdiction, and "because it (the bill) was not (filed) in the circuit court of the county in which the principal office or place of business of such corporation is situated."

Respectfully submitted,

LEVY MAYER,
Attorney for Appellee
Edwin A. Potter, as Receiver.

WASHINGTON, D. C.,
December 13, 1912.

FILED.
APR 3 1911
JAMES H. McKENNEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1910.

No. [redacted] 84.

EDWIN M. KEATLEY, as Receiver of American Guaranty Company of Chicago under appointment of the Circuit Court of Kanawha County, West Virginia,
Appellant,

vs.

CARRIE REBECCA FUREY; EDWIN A. POTTER, as Receiver of The American Guaranty Company of Chicago, by appointment of the Circuit Court of the United States for the Northern District of Illinois, et al.,
Appellees.

REPLY BRIEF ON BEHALF OF EDWIN A. POTTER AS RECEIVER IN SUPPORT OF THE MOTION TO DISMISS THE APPEAL.

LEVY MAYER,
Attorney for Edwin A. Potter, Receiver.

GUNTHORP - WARREN PRINTING CO., CHICAGO

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 612

EDWIN M. KEATLEY, as Receiver of American Guaranty Company of Chicago under appointment of the Circuit Court of Kanawha County, West Virginia,

Appellant,

vs.

CARRIE REBECCA FUREY; EDWIN A. POTTER, as Receiver of The American Guaranty Company of Chicago, by appointment of the Circuit Court of the United States for the Northern District of Illinois, et al.,

Appellees.

REPLY BRIEF ON BEHALF OF EDWIN A. POTTER AS RECEIVER IN SUPPORT OF THE MOTION TO DISMISS THE APPEAL.

To the lengthy briefs (127 pages) filed on behalf of appellant we wish to make a very short reply.

Section 59 of the West Virginia Code is not fairly quoted on pages 6 and 7 of appellant's brief. It is *not* divided into two sections as counsel would have it appear. Furthermore, appellant has omitted this clause:

"* * * under the common seal or other

wise, and all lawful acts be done in the corporate name in like manner and *with like effect as before such dissolution or expiration* * * *." (The Statute is set out in full in our opening brief, pp. 5-7.)

I.

We contend that two matters were under consideration by and were passed upon by the Circuit Court, viz: (1) The prayer of the intervening petition of Keatley; (2) Keatley's oral motion for an order directing the Federal receiver (E. A. Potter) to turn over the property and assets of the Guaranty Company in his hands to Keatley, the State Court receiver. The decree from which the appeal is taken finds not alone that there is no equity in the intervening petition and denies the prayer thereof, but also finds that there is no equity in the motion made by Keatley and overrules the same. (Rec., 287.) The motion made by Keatley as the West Virginia receiver to have the funds turned over to him, does not at all involve a jurisdictional question, for such a motion is a recognition of the jurisdiction of the Federal Court, and is not infrequently made by a domiciliary receiver when he requests the Court of another jurisdiction to turn over to the courts of the domicile of the corporation the administration of its assets and property. (And such a case in principle was that of *Louisville Trust Co.* v. *Knott*, 191 U. S., 225.) The granting of such a motion by the Federal Court would be a matter solely within its

equitable jurisdiction. Even assuming that the intervening petition alone does present a jurisdictional question (which we deny), it is apparent, since the decree appealed from is based not only on the prayer of the intervening petition, but also on the motion of the appellant, that there is no single definite issue of jurisdiction presented by the record. This court has held that in the absence of a certificate of jurisdiction,

> "the record must definitely and unequivocally show that the Court below sends up for consideration a single and definite question of jurisdiction." *Huntington* v. *Laidley*, 176 U. S., 668; *Courtney* v. *Pradt*, 196 U. S., 89.

Appellant's counsel attempt to minimize the effect of the motion so made by appellant, by arguing that the motion would have had no purpose or effect if the Court below had jurisdiction. (Appellant's brief, page 65.) Counsel overlook the fact that such motion could be and was consistently made with an admission of jurisdiction. In the interests of comity courts frequently turn the administration of the assets of a corporation over to the domiciliary receiver. The motion could be in no sense, and was not a corollary to the prayer of the intervening petition, but was an entirely independent proceeding. The appellant, too, has specifically assigned error, not alone upon the overruling of the prayer of the intervening petition, but also upon the overruling of the motion. (Rec., 289.) In all cases cited or we think that can be cited by appellant where this Court has sustained an appeal wherein no certificate of jurisdiction was obtained, this Court expressly stated that it

appeared upon the face of the record that the only question decided below was a single definite question of jurisdiction.

II.

Appellant's counsel have also discussed at length the position taken by them, that the power of the Guaranty Company to appear in the Federal Court after a decree of dissolution in West Virginia under the West Virginia Statutes, presents a jurisdictional question within the meaning of the act allowing direct appeals.

This is a case where a dissolved corporation has been sued and its appearance has been entered under a West Virginia Statute, which expressly continues the existence of the corporate entity after its dissolution, for the very purpose of defending suits like the one here involved. True, under the old common law rule the dissolution of a corporation generally abated all actions against it and rendered it no longer liable to suit. On account of this common law doctrine, in most if not all of the States, statutes have been passed continuing the existence of dissolved corporations for a limited time, and for purposes of suit, etc. The appearance of the Guaranty Company was entered by its proper corporate officers under its corporate seal, and by its theretofore duly and expressly authorized attorneys. The intervening petitioner, Keatley, contends that the appearance of the corporation could only have been entered by the receiver

appointed in West Virginia. This receiver, however, was specifically limited in his jurisdiction to the State of West Virginia by express order of the Court appointing him, and had no power whatever to enter the appearance of the Guaranty Company and had no right to the assets of the Company without the State of West Virginia. All of the assets of the Company were located at its principal office in Chicago and remained, therefore, under the control of the officers of the Company after the decree of dissolution. The complaint of the subsequently appointed West Virginia receiver, Keatley, can go only to the construction of the West Virginia Statute, as to whether the receiver or the officers and the Company's attorneys had authority to enter the appearance of the Company in the Federal Court. The officers of the Company and its authorized attorneys did duly enter the appearance of the Company, and its assets and the stockholders were bound thereby. The questions raised by the intervening petition of Keatley, are not those which involve the jurisdiction of the court as a Federal Court, but are simply questions of general law and equity and are applicable alike to a similar bill filed in any court. There is no question here as to the validity of the service of process, or of waiver of jurisdiction by a general appearance. The Company itself has appeared generally and is bound by the acts of its authorized officers and is not seeking to question in any way its appearance. The attack made upon the appearance is purely collateral.

The issues decided in the cases relied upon by appellant are not parallel to those here involved. In *Davis* v. *R. R. Co.*, 217 U. S., 171, 172, the issue was whether the defendant by the nature of its appearance had waived its right to object to the jurisdiction of the Court, as it did by motion to quash the service of process upon it.

In *Interior Construction Company* v. *Gibney*, 160 U. S., 218, the only matter decided in the lower court was a demurrer to a plea to the jurisdiction based on the ground that the defendants were not residents of the State in which the suit was brought.

In *Kendall* v. *Loom Co.*, 198 U. S., 482, the question raised was as to the validity of the service of process on a resident officer of a corporation in a state where the corporation was not doing business. In the present case, however, the question presented by the intervening petitioner as to the power of the attorneys and officers of the Guaranty Company to appear is simply one of general law and in no way involves the jurisdiction of the Circuit Court as a Federal Court.

III.

Counsel for appellants have to some extent argued upon the merits of the case as though they were now before the Court. We deem it pertinent to correct their suggestion that the receiver appointed in West Virginia was in any way a statutory receiver. Counsel have referred to the cases of *Relfe* v. *Rundle*, 103 U. S., 222, and *Pen-*

dleton v. *Russell*, 144 U. S., 640. The receiver provided for by the West Virginia Statute is merely a general chancery receiver, and is not a statutory officer within the meaning of that term as used in certain of the cases in this Court. The distinction has been pointed out in *Great Western Mining Company* v. *Harris*, 198 U. S., 561, 576, where the Court refers to *Relfe* v. *Rundle*, and calls it an exceptional case in which by statute the entire property of the insolvent company was vested in the state superintendent of insurance, and where his authority did not emanate from the decree of any court.

Under the West Virginia Statute (sec. 58), whether a receiver should or should not be appointed depends upon the discretion of the court. Whatever powers such receiver has would be powers obtained from the decree of the court and he would be subject to the orders and control of the court appointing him, and would not be vested with independent statutory authority to administer the property. The present is merely an action brought to collect and distribute the estate of a dissolved corporation, whose existence has been continued by the statute of the State under which it was incorporated.

In *Bacon* v. *Robertson*, 18 How., 480; and *McGoon* v. *Scales*, 9 Wall., 23, 31, this Court passed upon cases involving facts somewhat similar to the merits of the present case.

Messrs. Edgerton & Gill in their brief (p. 7) on behalf of appellant, are in error: Counsel for the Chi-

cago receiver (Mr. Potter) did *not* appear in the West Virginia Court when Mr. Keatley was there appointed. (Rec., 179.)

We again pray that the motion to dismiss the appeal be granted.

Respectfully submitted,

LEVY MAYER,
Attorney for Edwin A. Potter, Receiver.

Chicago, April 1, 1911.

Office Supreme Court, U. S.
FILED.
MAR 15 1911
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1910.

No. [redacted] 84

EDWIN M. KEATLEY AS RECEIVER OF AMERICAN GUARANTY COMPANY OF CHICAGO, UNDER APPOINTMENT OF THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA,

Appellant,

vs.

CARRIE REBECCA FUREY; EDWIN A. POTTER AS RECEIVER OF THE AMERICAN GUARANTY COMPANY OF CHICAGO, BY APPOINTMENT OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS ET AL.,

Appellees.

MOTION OF APPELLEE, EDWIN A. POTTER AS RECEIVER, TO DISMISS APPEAL AND ARGUMENT IN SUPPORT THEREOF.

LEVY MAYER,
Chicago, Illinois,
Attorney for Appellee, Edwin A. Potter, as Receiver.

GUNTHORP-WARREN PRINTING CO., CHICAGO

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 612.

EDWIN M. KEATLEY, as Receiver of the American Guaranty Company of Chicago, by appointment of the Circuit Court of Kanawha County, West Virginia,

Appellant,

vs.

CARRIE REBECCA FUREY; EDWIN A. POTTER, as Receiver of the American Guaranty Company of Chicago by appointment of the Circuit Court of the United States for the Northern District of Illinois, *et al.*,

Appellees.

MOTION TO DISMISS APPEAL.

Now comes the appellee, Edwin A. Potter, as receiver of the American Guaranty Company of Chicago by appointment of the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division, and moves this court to dismiss this appeal on the ground that this court has no jurisdiction because, (a) no jurisdictional question has been certified to this court by the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, under and in accordance with Section 5 of the Act of March 3, 1891, and

(b) because no question of the jurisdiction of the Circuit Court of the United States as a Federal Court, was involved in the order or decree from which this appeal has been taken.

In support of the above motion said appellee herewith submits the accompanying brief and suggestions.

EDWIN A. POTTER,
As Receiver, etc.

By Levy Mayer
His Attorney.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1910.

No. 612.

EDWIN M. KEATLEY, as Receiver of the American Guaranty Company of Chicago, by appointment of the Circuit Court of Kanawha County, West Virginia,

vs.

CARRIE REBECCA FUREY; EDWIN A. POTTER, as Receiver of the American Guaranty Company of Chicago by appointment of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, *et al.*

BRIEF AND ARGUMENT ON BEHALF OF THE MOTION OF APPELLEE, EDWIN A. POTTER, AS RECEIVER OF THE AMERICAN GUARANTY COMPANY OF CHICAGO TO DISMISS THE APPEAL HEREIN.

This is an appeal taken to this court direct from the Circuit Court of the United States for the Northern District of Illinois, under Section Five of the Act of March 3, 1891, allowing direct appeals to this court from the Circuit Courts "in any case in which the jurisdiction of the court is in issue." The Act further provides that in such cases the question of jurisdiction alone shall be certified to this court from the court below for decision.

This motion to dismiss the appeal is made

on the grounds, *First*,—that no certificate of jurisdiction has been obtained by the appellant as required by the act; and *Second*,—that the jurisdiction of the Circuit Court as a Federal Court was not in issue.

The order of the Circuit Court allowing this appeal, recites that "*this court is of the opinion that no question of jurisdiction is involved in said order and decree* (the decree appealed from), but allows said appeal without certifying to any jurisdictional question, upon the said Keatley filing an appeal bond in the sum of Five Hundred Dollars ($500.00) with surety to be approved by the court." (Rec., 290.) The Circuit Court, therefore, has certified to no jurisdictional question. On the contrary, it has expressly decreed that no such question is involved.

STATEMENT OF FACTS.

(*All record references are to the printed pages.*)

The American Guaranty Company of Chicago was a corporation organized in 1892 under the laws of West Virginia (Rec., 32-35), for the purposes, among others, of issuing investment, service and income contracts. The principal office of the Guaranty Company, by the express terms of its charter, has always been in the City of Chicago (Rec., 33, 183), and all its property was there located (Rec., 25), the statutory office only being maintained in West Virginia. All of the officers and stockholders have continuously resided at and done business in Chicago (Rec., 183).

On February 1, 1909, there was filed in the Circuit Court of Kanawha County, West Virginia, by all the outstanding stockholders of the American Guaranty Company, a bill in equity to dissolve said corporation, under and in accordance with the West Virginia statutes. The statutes, under which such action was taken, are germane to the questions raised by this motion and we therefore quote them in full. Sections 57, 58 and 59 of the Corporation Act of West Virginia in force on February 1, 1909, (*Code of West Virginia, Ch. 53, Secs. 57, 58 and 59*) provide as follows:

> "Sec. 57.—If not less than one-third in interest of the stockholders of a corporation desire to wind up its affairs, they may apply by a bill in chancery to the circuit court of the county in which the principal office or place of busi-

ness of such corporation is situated, or, if there be no such office or place of business in this state, to the circuit court of the county in which the other stockholders or any one or more of them reside, or are found, or in which the property of such corporation or any part of it may be, setting forth in the bill the grounds of their application; and the court may thereupon proceed according to the principles and usages of equity to hear the matter, and if sufficient cause therefor be shown, to *decree a dissolution of the corporation, and make such orders and decrees, and award such injunctions in the cause as justice and equity may require.*

Sec. 58.—When a corporation expires, or is dissolved, or before its expiration or dissolution, upon sufficient cause being shown therefor, such court, as is mentioned in the preceding section, *may, on application of a creditor or stockholder,* appoint one or more persons to be receivers to take charge of and administer its assets; *and whether such receiver be appointed or not,* may make such orders and decrees, and award such injunctions in the cause as justice and equity may require. This section shall apply to corporations heretofore or hereafter chartered by another state, which may have done business and acquired property, or contracted debts, in this state, and any of whose creditors, or stockholders, or their personal representatives, reside herein; and the circuit court of any county wherein such creditor, stockholder, or personal representative, may reside, or where such assets or property, or part thereof may be, or where the person owing such debts, or having such property in possession, may reside, shall afford such relief as is prescribed in this and the next section.

Sec. 59.—When a corporation shall expire or be dissolved, *its property and assets, shall, under the order and direction of the board of directors then in office, or the receiver or receivers*

appointed for the purpose by such circuit court as is mentioned in the fifty-seventh section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs, and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. *And suits may be brought, continued or defended, the property, real or personal, of the corporation be conveyed or transferred under the common seal or otherwise, and all lawful acts be done in the corporate name, in like manner and with like effect as before such dissolution or expiration;* but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto."

The bill of complaint in the Circuit Court of Kanawha County, West Virginia, was filed and joined in by all the outstanding stockholders of the Guaranty Company, and the Guaranty Company was made defendant thereto (Rec., 23-29); the Guaranty Company, on February 1, 1909, filed its answer to said bill, and consented to the granting of the prayer thereof, and to the entry of the decree of dissolution, and to the appointment of a receiver. (Rec., 29.) On February 1, 1909, the Circuit Court of Kanawha County, West Virginia, after a hearing upon the bill of complaint and the answer thereto, entered a decree, dissolving the Guaranty Company, and appointed V. L. Black of Charleston, West Virginia, "receiver of all and singular, the property and assets of the American

Guaranty Company of every description, *within the jurisdiction of the court*, to have and to hold, and to administer the same under the orders and directions of this court. * * * The receiver is hereby directed to take all and such steps as may be necessary to secure possession of the property *within the jurisdiction of this court.* * * *" (Rec., 53.)

Under Section 58, p. 6, *supra*, the court need not have appointed a receiver at all.

It will be observed that the order expressly limits the powers of the receiver to the property and assets of the Guaranty Company *within the state of West Virginia.* The bill of complaint specifically alleges that all of the property and effects of the Guaranty Company are in the City of Chicago (Rec., 28), except a few cash balances, in nominal amounts due to the Guaranty Company from about fifteen banks outside of Chicago which had been the collecting agents of the Guaranty Company. (Rec., 28.)

The record further shows that the Guaranty Company has no liabilities in West Virginia other than on forty-eight contracts, none of which was in default and the total cash surrender value of which does not exceed $9,751.44. (Rec., 28.)

V. L. Black duly qualified under said appointment as receiver of the property of the Guaranty Company "*within the jurisdiction of this* (West Virginia) court" (Rec., 53), but acquired no property because there was none in West Virginia. (Rec., 28.)

On February 2, 1909, there was filed in the Circuit Court of the United States in and for the North-

ern District of Illinois, Eastern Division, a bill of complaint by Carrie Rebecca Furey *et al.* against said American Guaranty Company of Chicago, alleging that on February 1, 1909, in accordance with the statutes of West Virginia authorizing the same, a bill in chancery had been filed in the Circuit Court of Kanawha County, West Virginia, praying for a decree of dissolution of the Guaranty Company, and setting up the proceedings had in the Circuit Court of Kanawha County on said day; that a decree was entered by said Circuit Court of Kanawha County on February 1, 1909, dissolving said American Guaranty Company, and appointing a receiver of the company's assets located *within the State of West Virginia* (Rec., 6); that in consequence of the entry of said decree of dissolution, the Guaranty Company had become the trustee for its creditors and stockholders of all of its property, assets and effects (*and so it was held by this court in Bacon* v. *Robertson,* 18 How., 480); that the receiver so appointed by the West Virginia court had no jurisdiction outside of the State of West Virginia to collect or enforce collection of all, or any of its property, assets and effects (*and so this court decided in Great Western Min. & Mfg. Co.* v. *Harris,* 198 U. S., 561); that said property, assets and effects were located within the City of Chicago and within the jurisdiction of said United States Circuit Court; that some of the holders of contracts of the Guaranty Company threatened to commence suit by attachment or otherwise, to levy upon the property, assets and effects situate in the State of Illinois, and that by means of such attachment, priority would be secured by

some of the contract holders over others, and the property, assets and effects would be wasted unless they were taken possession of by a receiver to be appointed by said United States Circuit Court to conserve and distribute the estate among those entitled thereto. (Rec., 2-8.)

The answer of the American Guaranty Company to said bill of complaint confessing all the allegations of the bill and consenting to the appointment of a receiver of its property, assets and effects by said United States Circuit Court, signed by its president, secretary and solicitors under the corporate seal, was filed on February 2, 1909. (Rec., 56.) This was in strict accord with Section 59, *supra*, pp. 6-7.

On February 2, 1909, said United States Circuit Court, upon the bill of complaint and the answer and consent thereto, appointed appellee, Edwin A. Potter of Chicago, Illinois, receiver of all and singular the property of the Guaranty Company of every description and of all moneys, claims in action, credits, bonds, stocks and other assets of every kind, and of the other property, real, personal and mixed held or possessed by the company or to which it was entitled or in which it had any interest. And said receiver was directed to take immediate possession of all the property and assets described in said order, and the officers and agents of the Guaranty Company were required to surrender and deliver all its property to said receiver; and the Guaranty Company was directed to execute a deed of all its property to said receiver. (Rec., 57.)

Edwin A. Potter duly qualified as receiver and

proceedings were at once taken by him to reduce and he did reduce all of the property of the Guaranty Company into his possession. On February 3, 1909, a deed was executed by the Guaranty Company conveying all its property of every kind to said Potter as receiver. (Rec., 256.) On February 4, 1909, the cause was referred to a master in chancery of the said United States Circuit Court. (Rec., 257.) Various contested proceedings were thereafter had in that court by said Receiver Potter to secure possession of various assets of the Guaranty Company, and after lengthy arguments and other court proceedings (Rec., 61-125), certain funds belonging to the Guaranty Company and then in the possession of the Royal Trust Company, a Chicago bank were, under the direction of said court, turned over by said bank to Edwin A. Potter as receiver. (Rec., 126.) This fund alone amounted to $566,719.50 and was turned over to said receiver on March 9, 1909. (Rec., 234.)

On March 26, 1909, Edwin A. Potter, as receiver, filed an inventory of the assets and a schedule of the liabilities of the Guaranty Company in said Federal court (Rec., 262); this inventory shewed the assets then in his possession to amount in cash and securities to over One Million Four Hundred Thousand ($1,400,000) Dollars. (Rec., 263.)

On May 26, 1909, the United States Circuit Court entered an order that all contract holders or other persons, having claims against the American Guaranty Company, should present and file such claims on or before September 1, 1909, with

James S. Hopkins, a master in chancery of that court. (Rec., 267.) A notice of said order was mailed to every contract holder, creditor and claimant of said Guaranty Company. (Rec., 164, 175.) Under and in accordance with said order and an additional order there were filed with the Master in Chancery seven thousand two hundred and nineteen (7,219) separate proofs of claim against the Guaranty Company. (Rec., 223.) As already stated only forty-eight of such contract holders live in West Virginia, and those forty-eight contracts have a cash surrender value of only $9,751.44. (Rec., 28.) The holders of contracts of the Guaranty Company are scattered throughout nearly all the states of the Union.

A contract holders' committee was given leave to intervene in the United States Circuit Court on February 8, 1909. (Rec., 61.) This committee represented as attorneys in fact under signed agreements, five thousand two hundred and seventy-seven of the contract holders and creditors of the Guaranty Company and joined in the proceedings. (Rec., 59, 61.) The committee prayed that all of the assets and property of the Guaranty Company should be delivered into the hands of Edwin A. Potter, as receiver. (Rec., 126-7.) Mr. Potter, as receiver, has been duly and daily proceeding with the administration of the estate of the Guaranty Company, and as a result of his administration now has in his possession all its undisturbed property, assets and effects, amounting as per inventory filed March 26, 1909 (Rec., 169), to $1,409,234.07, subject to the order and control of said United States Circuit Court.

On September 22, 1909, *nearly eight months after* the appointment of Mr. Potter, as receiver, by the United States Circuit Court, one W. R. Gilliam, who had previously (August 24-September 1, 1909, Rec., 223) *filed with the Master in Chancery* of the United States Circuit Court his claims against the American Guaranty Company, under and in accordance with the orders of the United States Circuit Court (Rec., 223), filed a petition in the Circuit Court of Kanawha County, West Virginia, alleging that he was a creditor of the Guaranty Company, and asking to be made party defendant to the proceedings theretofore had in the Kanawha County Circuit Court, and that said court discharge the receiver theretofore appointed therein and appoint a new receiver with enlarged jurisdiction. (Rec., 183.) On the same day, September 22, 1909, the Circuit Court of Kanawha County (expressly refusing the plaintiffs in that cause time to answer the petition Rec., 180), discharged V. L. Black as receiver, and appointed one Edwin M. Keatley, of Charleston, W. Va., receiver of the American Guaranty Company, and authorized him to take the custody, possession and control of all the property, and assets of the American Guaranty Company situate in that state *or in any other state*, and to distribute the same (Rec., 179-182), thus enlarging the powers of the West Virginia receiver whose authority had theretofore on February 1, 1909 (Rec., 53) been expressly limited to the State of West Virginia. (Rec., 53.) This subsequent order was entered in the West Virginia state court on September 22, 1909, notwithstanding the fact that at that time all the prop-

erty and assets of the Guaranty Company were in the possession and control of the United States Circuit Court for the Northern District of Illinois, and were there being duly administered by that court and its receiver (Rec., 231-234), under an order of the Federal court entered on February 2, 1909 (Rec., 57-8).

On October 27, 1909, Edwin M. Keatley, so appointed receiver by the Circuit Court of Kanawha County on September 22, 1909, filed an intervening petition in the United States Circuit Court for the Northern District of Illinois (Rec., 215). That intervening petition (Rec., 128-135) sets up the appointment of Keatley as receiver by the Circuit Court of Kanawha County on September 22, 1909, and alleges that he was advised that the decree of the Circuit Court of Kanawha County dissolving the Guaranty Company on February 1, 1909, was fully authorized by the West Virginia statutes and deprived the Guaranty Company absolutely of any power or authority to act in any manner whatsoever as a corporation thereafter, and ended the authority of its directors to act in its behalf except as expressly provided by Section 59 of the West Virginia statutes heretofore quoted: that said decree of dissolution prevented the Guaranty Company from appearing in said United States Circuit Court in Illinois and submitting to its jurisdiction; and that the Guaranty Company, upon its dissolution, could only finish its business, conserve and marshal its assets, pay and discharge its lawful indebtedness, and distribute and dispose

of its surplus funds, if any, by and through the direction, orders, judgments and decrees of the Circuit Court of Kanawha County, West Virginia; that any attempt so to do "or any interference with the property, business or assets of said defendant corporation *by any other court wherever situate*, except ancillary to and upon the request and authority of said court of original jurisdiction would be wholly unwarranted, and without competent jurisdiction, and all the acts, orders, directions, judgments and decrees of such other court and all its proceedings, would in that respect, be *coram non judice* and without right" (Rec., 133-134); that the appearance in the United States Circuit Court in Illinois of the Guaranty Company on February 2, 1909, and its answer to the bill of complaint consenting to the appointment of a receiver at a time when the corporation had been dissolved, and a receiver appointed in the State of West Virginia on February 1, 1909, gave the United States Circuit Court no jurisdiction whatever (Rec., 134); and in conclusion, the intervening petition prayed "that by virtue of the order so made by said Circuit Court of Kanawha County, West Virginia, appointing the petitioner receiver of said court for the property and assets of said defendant, American Guaranty Company of Chicago, it becomes the duty of your petitioner to ask permission of this Honorable Court to intervene specially in this action, not acknowledging, but on the contrary, protesting the jurisdiction of this Honorable Court in the premises, and to ask that this Honorable Court permit to be filed herein this peti-

tion for the purpose aforesaid, and to the end that, after proper answer, the issues framed may be heard in this Honorable Court and finally determined, and that the order and decree of this Honorable Court be made and entered, as the rules of equity shall require." (Rec., 134-135.)

The answer of the American Guaranty Company to this petition of Keatley was duly filed on October 27, 1909 (Rec., 216-225). It sets up *in haec verba*, among other things, the resolution passed at a meeting of the Executive Committee of the Guaranty Company, which (as the answer alleges under the by-laws of the Company) had all the powers of the Board of Directors, held on January 30th, 1909 (two days *before* the entry of the decree of dissolution in West Virginia). The said resolution was as follows:

> "Resolved further, That Messrs. Gorham & Wales, Attorneys of Chicago, Illinois, be and they are hereby retained, requested and directed to enter the appearance of said Company (Guaranty Company) in any proceedings that may be instituted in any court, State or Federal, sitting in Chicago, Illinois, and in such proceedings to consent to the appointment of a receiver or receivers to take charge of and administer the assets of said Company located in the State of Illinois or elsewhere, and to consent to the entry of any and all other orders and decrees in the cause that may be so instituted in Illinois, as they may think proper or as justice and equity may require, and throughout such proceedings last aforesaid to act for and on behalf of and represent said Company as its attorneys and solicitors therein." (Rec., 218.)

Pursuant to that resolution, the appearance of the Guaranty Company was filed in the Federal Court on

February 2, 1909, by the Guaranty Company by its president and secretary, under its corporate seal, and by its above named attorneys. (Rec., 56.)

The answer further sets up that under the statutes (Sec. 59) of West Virginia, after a decree of dissolution, *suits may be* brought, continued or *defended, and all lawful acts be done in the corporate name in like manner and with like effect as before the dissolution of said corporation*, so far as shall be necessary or proper for collecting the debts and claims due the corporation, converting its property and assets into money, prosecuting and protecting its rights, and enforcing its liabilities, and paying over and distributing its property and assets or the proceeds thereof to those entitled thereto; that the bill filed in the United States Circuit Court was for the purpose of collecting debts and claims due to the defendant, and for converting its property and assets into money and for protecting and prosecuting its rights, etc., within the meaning of the statutes of West Virginia; and that the Guaranty Company continued in existence as a corporation for that purpose, and for the purpose of defending said suit, notwithstanding the decree of dissolution entered in West Virginia on February 1, 1909. (Rec., 219, 220.) And so the United States Circuit Court expressly held, after the citation of controlling authorities. (Rec., 285).)

The answer further sets up the nature and character of the proceedings instituted by said Gilliam in West Virginia, which resulted in the appointment of Keatley as receiver, and made as an exhibit thereto, the answer filed by the Guaranty Company

in the West Virginia court to the petition of Gilliam, and which latter answer set up in the West Virginia court all the proceedings theretofore had in the United States Circuit Court, and showed that the property was in process of administration and distribution by said United States Circuit Court through its receiver, and that the time for filing claims against said estate in the United States Circuit Court by order of that court had expired September 1, 1909, long prior to the appointment of Keatley as receiver by the West Virginia Court. (Rec., 222-279.) Answers resisting the intervening petition of Keatley in the United States Circuit Court were also filed by Mr. Potter as receiver, and by the contract holders' committee, by Carrie Rebecca Furey, and Caroline Latour Furey. (Rec., 279-280.)

An oral motion was made by said Keatley requesting the United States Circuit Court to turn over to him all of the property and assets of said Guaranty Company then held by Edwin A. Potter as receiver under appointment from said United States Circuit Court. (Rec., 287.) After full hearing and argument, Judge Kohlsaat on January 26, 1910, filed an opinion (Rec., 280-288), denying the prayer of the intervening petition of Keatley. (Rec., 286.)

On February 7, 1910, the United States Circuit Court entered an order dismissing the intervening petition of Keatley. The order, reciting the hearing of the petition, and the answers thereto, and the motion of the petitioner for an order directing Potter as receiver to turn over the property and assets of the Guaranty Company to the petitioner sets forth:

"And the court having heretofore taken all of said matters under advisement and now having duly considered the same, and being fully advised in the premises, finds: that it has jurisdiction in the premises, *that there is no equity in said intervening petition* or in said motion and that said intervening petitioner, Edwin M. Keatley, is not entitled to any of the relief prayed for in said intervening petition or in said motion.

Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said intervening petition and the said motion, and each of them, shall be and the same are hereby overruled and denied, and the said intervening petition is hereby ordered to be, and the same is hereby dismissed." (Rec., 287.)

Subsequently, a petition for an appeal from said order was filed May 6, 1910 (Rec., 288), by Keatley together with an assignment of errors, and on May 6, 1910, the following order allowing the appeal was entered:

"Now comes Edwin M. Keatley, by his solicitors, and presents his petition for an appeal and assignment of errors, praying an appeal to the United States Supreme Court from the order and decree entered herein on February 7, 1910.

This court is of the opinion that no question of jurisdiction is involved in said order and decree but allows said appeal without certifying to any jurisdictional question upon the said Keatley filing an appeal bond in the sum of Five Hundred Dollars ($500.00) Dollars with surety to be approved by the court." (Rec., 290.)

No certificate of jurisdiction was obtained from the Circuit Court by the appellant herein.

BRIEF.

I.

THIS APPEAL SHOULD BE DISMISSED BECAUSE NO CERTIFICATE OF JURISDICTION WAS OBTAINED FROM THE CIRCUIT COURT AND NO EQUIVALENT OF A CERTIFICATE OF JURISDICTION IS SHOWN BY THE RECORD.

Courtney v. *Pradt*, 196 U. S., 89.
Filhiol v. *Torney*, 194 U. S., 356.
Chappell v. *U. S.*, 160 U. S., 507.
The Bayonne, 159 U. S., 687, 693.
Shields v. *Coleman*, 157 U. S., 168, 176.

II.

THE JURISDICTION OF THE CIRCUIT COURT AS A FEDERAL COURT WAS NOT INVOLVED WITHIN THE MEANING OF THE ACT ALLOWING A DIRECT APPEAL TO THIS COURT. THE SUBJECT MATTER WAS A CONTROVERSY AS TO THE POSSESSION OF THE PROPERTY OF A CORPORATION, BETWEEN A RECEIVER APPOINTED BY THE FEDERAL COURT AND A RECEIVER SUBSEQUENTLY APPOINTED BY A STATE COURT, AND INVOLVED THE CONSTRUCTION OF THE WEST VIRGINIA STATUTES, AND A QUESTION OF GENERAL LAW.

Fore River Ship Building Company v. *Hagg*, 219 U. S., 175.
Louisville Trust Co. v. *Knott*, 191 U. S., 225.
Courtney v. *Pradt*, 196 U. S., 89.
Bache v. *Hunt*, 193 U. S., 523.
Board of Trade v. *Hammond Elevator Co.*, 198 U. S., 424.
Schweer v. *Brown*, 195 U. S., 171.

ARGUMENT.

I.

THIS APPEAL SHOULD BE DISMISSED BECAUSE NO CERTIFICATE OF JURISDICTION WAS OBTAINED FROM THE CIRCUIT COURT AND NO EQUIVALENT OF A CERTIFICATE OF JURISDICTION IS SHOWN BY THE RECORD.

The appeal taken from the Circuit Court direct to this court is under an order of the Circuit Court for the Northern District of Illinois, Eastern Division thereof, and is not accompanied by any certificate of jurisdiction as required by Section 5 of the act allowing direct appeals. The order allowing the appeal recites:

> "*This court is of the opinion that no question of jurisdiction is involved in said order and decree, but allows said appeal without certifying to any jurisdictional question,* upon the said Keatley filing an appeal bond in the sum of Five Hundred Dollars ($500) with surety to be approved by the court." (Rec., 290.)

The petition for appeal recites that:

> "The above named Intervenor, Edward M. Keatley, conceiving himself aggrieved by the order and decree entered on the 7th day of February, 1910, in the above entitled proceeding, dismissing his intervening petition herein, based solely upon the ground that this Honorable Court has never obtained jurisdiction of the person of the defendant, American Guaranty Company of Chicago, because of the lack of service of process on said defendant, and because no proper or legal voluntary appearance by said defendant was or could be made herein,

doth hereby appeal from said order and decree to the Supreme Court of the United States and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree were made, *together with the written opinion* (Rec., 280) of the Honorable Christian C. Kohlsaat, on such question of jurisdiction rendered but not filed herein, duly authenticated, may be sent to the Supreme Court of the United States." (Rec., 288.)

It is assigned for error by the appellant (Rec., 289), *first*, that the Circuit Court

> "erred in taking jurisdiction of and over the person and property of the defendant American Guaranty Company of Chicago, after the decree of dissolution of, and appointment of a receiver for said defendant entered pursuant to express statute by a court of competent jurisdiction in the state of defendant's domicile, such jurisdiction of the said Circuit Court of the United States resting solely upon a pretended *appearance by attorneys for said defendant appointed as such before the said dissolution and a similar pretended voluntary appearance by the former president and secretary of said defendant corporation,*"

and, *second*, that the Circuit Court

> "erred in making and entering its order and decree dated February 7, 1910, denying and dismissing the petition and motion of Edwin M. Keatley as receiver of said defendant corporation appointed by the said State Court, for right to intervene and have and receive as such officer, the property and assets of said defendant corporation now in the possession of said United States Circuit Court." (Rec., 289.)

The order of February 7, 1910, from which the appeal was taken recites the coming on of the mo-

tion and the hearing of the same upon the intervening petition filed by the appellant and the answers thereto and

> "*finds that it has jurisdiction in the premises, that there is no equity in said intervening petition or in said motion*, and that said intervening petitioner, Edwin M. Keatley, is not entitled to any of the relief prayed for in said intervening petition *or in said motion*. Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said intervening petition and the said motion, and each of them, shall be and the same are hereby overruled and denied, and that said intervening petition is hereby ordered to be and the same is hereby dismissed." (Rec., 287.)

It is clear from this order that two separate matters were under consideration by the court; (1) the prayer of the intervening petition of the appellant; and (2) the motion (oral) of the appellant for an order directing the receiver appointed by the United States Circuit Court to turn over the funds and property of the American Guaranty Company to the receiver subsequently appointed by the West Virginia State Court. Both the intervening petition and the motion were denied. The opinion of Judge Kohlsaat filed on January 26, 1910 (Rec., 286), states in part:

> "So I am constrained under the circumstances to hold that at the date of the institution of this suit the West Virginia receiver was not vested with control and title to the property in the possession of the receiver herein, but that the same was at most held by the corporation in trust for creditors and stockholders; *that this court being a court in equity has juris-*

diction in the premises. The claim that the jurisdiction of this court was in any manner affected by the September order of the West Virginia court does not appeal to me as well founded, nor is it clear how the creditors and stockholders can be injured by the administration. In the interest of comity I should gladly in the proper case release jurisdiction at the request of a brother judge, especially since he seems to feel personally at fault for the present situation. Believing, however, that his action was wise and desiring to co-operate with him in doing all that a court of equity may do to conserve the rights of creditors and stockholders, and feeling as I do that to grant the motion of the petitioners would be unjust to them and seeing no reason why complication should result, I am of the opinion that the prayer of the intervening petitioner should be and it is denied."

From the opinion of the Circuit Court it is not open to dispute that the finding inserted in the order of February 7, 1910, from which this appeal is taken, namely "that it has jurisdiction in the premises" refers to the holding of Judge Kohlsaat, as shown in his opinion, that his court had jurisdiction as a court of equity.

Ordinarily, as this court has held, a certificate of jurisdiction is essential unless the record shows that the only matter tried and decided in the Circuit Court was one of jurisdiction. *Filhiol* v. *Torney*, 194 U. S., 356. It is apparent from the opinion of the Circuit Court that the question of the jurisdiction of that court as a Federal Court was in no way involved. The court in its opinion considered the matter as one affecting its jurisdic-

tion as a court of equity. The opinion, and the order dismissing the intervening petition and overruling the motion made by the intervening petitioner for the surrender of the funds to him as receiver, demonstrate that equitable matters were under consideration by the court. The intervening petition was filed by the receiver appointed for the same company by the West Virginia court nearly eight months *after* the appointment of a receiver for the same company by the United States Circuit Court, and the West Virginia receiver prayed that the funds of the company might be transferred to him as the receiver appointed in the domiciliary state of the corporation.

From the petition for appeal it is apparent that the appeal is prayed for generally; the petition merely reciting that the petitioner feels himself aggrieved by the decree dismissing his intervening petition based solely upon the ground that the Circuit Court never obtained jurisdiction of the person of the defendant, etc. The recital in the petition for appeal "based solely upon the ground," etc., clearly refers to the petitioner's construction of his intervening petition, and does not relate to any grounds for an appeal. It is assigned for error by the appellant that the Circuit Court erred in denying and dismissing the intervening petition and overruling a motion of the appellant to have and receive as a West Virginia receiver the property and assets of the Guaranty Company now in the possession of the United States Circuit Court. The Circuit Court would not certify to any jurisdictional question, but allowed the appeal gener-

ally. It further appears from an inspection of the record that a jurisdictional question *only* was not involved. And this court holds that where other than jurisdictional questions are involved a formal certificate of jurisdiction is essential to the maintenance of an appeal.

In *Chappell* v. *United States*, 160 U. S., 499, 507 (1896), referring to a case appealed under the first paragraph of section 5, allowing direct appeals to this Court where the question of jurisdiction of the Circuit Court is in issue, it is said:

> "In order to bring a case within the first class not only must it appear of record that a question of jurisdiction was involved below, but that question and that alone must be certified to this court. *If both a question of jurisdiction and other questions were before the court below and a writ of error is allowed in the usual and general form to review its judgment without certifying or specifying the question of jurisdiction this court cannot take jurisdiction under this clause of the statute.*"

This court said further:

> "There is no formal certificate of any question of jurisdiction; the allowance of the writ of error is general, and not expressly limited to such a question; and the petition for the writ, after mentioning all the proceedings in detail, asks for a review of all the 'rulings, judgments and orders' of the court 'upon the question of jurisdiction raised in said exceptions, pleas and demurrers and the other papers on file in this cause,' without defining or indicating any specific question of jurisdiction. Here, certainly, is no such clear, full and separate statement of a definite question of jurisdiction as will supply the want of a formal certificate under the first clause of the statute."

In *Shields* v. *Coleman*, 157 U. S., 168 (1895) it is said with reference to cases where a formal certificate of jurisdiction may be dispensed with:

> "It is not necessary that the word 'certify' be formally used. It is sufficient if there is a plain declaration that the *single* matter which is by the record sent up to this court for decision is a question of jurisdiction, and the precise question clearly, fully and separably stated. *No mere suggestion that the jurisdiction of the court was in issue will answer. This court will not of itself search, nor follow counsel in their search of the record to ascertain whether the judgment of the trial court did or did not turn on some question of jurisdiction. But the record must affirmatively show that the trial court sends up for consideration a single definite question of jurisdiction.* And that is here shown. The petition for an appeal is upon the single ground that the court wrongfully took jurisdiction of the property, because it was then in the possession of the state court, and in the order allowing the appeal it is explicitly stated that 'this appeal is granted *solely upon the question of jurisdiction*,' and the court at the same time reserved to itself the right, which it subsequently exercised, of determining what portions of the proceedings should be incorporated into the record sent here for the purpose of presenting this question."

In the present case there is no "plain declaration" or declaration whatever that a question of jurisdiction is before this court; none has been certified and this court cannot be asked to follow counsel for the appellant in searching the record for the purpose of ascertaining whether the judgment of the lower court turned upon some question of jurisdiction. And if this Court does search the record it will find from

the opinion (certified into the record at the instance of appellant, Rec., 288) of the Circuit Court that it considered the matter entirely one of equitable jurisdiction and as calling for the application of equitable principles.

In *The Bayone*, 159 U. S., 687 (1895), where an appeal was taken direct from the District Court to this court, it was said (page 692):

> "Nor do we think that the allowance of the appeal can be treated as a certificate. The prayer for appeal did, indeed, state that claimant appealed 'upon the ground that this court was without jurisdiction to make the said decree,' but it specified no question of jurisdiction, and asked 'that a transcript of the record and proceedings and papers upon which said final decree was made should be sent up,' as if the appeal were on the whole case. The entry of the district judge thereon was "appeal allowed.' This was wholly insufficient to subserve any other than the ostensible purpose."

This court there held that the appeal should be dismissed for want of jurisdiction, because of the lack of the proper certificate. It will be observed in the present case the petition for appeal prays that the appeal

> "May be allowed and that a transcript of the record and proceedings and papers upon which said order and decree were made"

may be sent up. This likewise is as if the appeal were taken from the entire order of February 7, 1910, and it should be further noted that there is no prayer whatever in the petition for appeal (Rec., 288) that any question of jurisdiction be certified to

this Court as required by the act of Congress. On the contrary the order for appeal recites that:

> "This court is of the opinion that no question of jurisdiction is involved in said order and decree. * * *" (Rec., 290.)

In *Courtney* v. *Pradt*, 196 U. S., 89 (1905), where an appeal was allowed from a Circuit Court direct to this court, but no certificate of a question of jurisdiction was applied for or granted, this Court said:

> "And the general rule is that the certificate is an absolute pre-requisite to the exercise of jurisdiction here. *Maynard* v. *Hecht*, 151 U. S., 324.
>
> Although we have recognized exceptions to the rule when the explicit terms of the decree, or even of the order allowing an appeal, might properly be considered as equivalent to the formal certificate. *Huntington* v. *Laidley*, 176 U. S., 668; *Arkansas* v. *Schlierholz*, 179 U. S., 598. But, as, stated by Mr. Justice Gray in *Huntington* v. *Laidley*, 'the record must definitely and unequivocally show that the court below sends up for consideration a *single* and definite question of jurisdiction,' that is, of the jurisdiction of the court as a court of the United States. No such state of case is exhibited by this record. There is no certificate nor any equivalent therefor. No *single* and definite issue as to the jurisdiction of the Circuit Court as a Federal Court is presented."

We submit that in all the cases in which this Court has allowed an appeal to be maintained without a formal certificate of jurisdiction it has been apparent either from the order allowing the appeal or from the petition of appeal and assignment of errors that the *sole* matter tried and decided in the Circuit

Court was one of jurisdiction. But where it is apparent as here that other questions were decided in the lower court, or where error is assigned on other than jurisdictional questions, the lack of a formal certificate has been held fatal to an appeal, and such appeals have been dismissed upon motion.

We pass now to a still more decisive objection to the maintenance of this appeal.

II.

THE JURISDICTION OF THE CIRCUIT COURT AS A FEDERAL COURT WAS NOT INVOLVED WITHIN THE MEANING OF THE ACT ALLOWING A DIRECT APPEAL TO THIS COURT. THE SUBJECT MATTER WAS A CONTROVERSY AS TO THE POSSESSION OF THE PROPERTY OF A CORPORATION, BETWEEN A RECEIVER APPOINTED BY THE FEDERAL COURT AND A RECEIVER SUBSEQUENTLY APPOINTED BY A STATE COURT, AND INVOLVED THE CONSTRUCTION OF THE WEST VIRGINIA STATUTES, AND A QUESTION OF GENERAL LAW.

In the very recent case of *Fore River Shipbuilding Co.* v. *Hagg*, 219 U. S., 175 (decided January 3, 1911), this court, by Mr. Justice Day, said:

> "The court has had frequent occasion to determine what is meant in the statute providing for review of cases in which the jurisdiction of the court is in issue, and it has been held that the statute means to give a review, not of the jurisdiction of the court upon general grounds of law or procedure, *but of the jurisdiction of the court as a Federal Court.*"

The court approvingly quotes from or cites: *Louisville Trust Co.* v. *Knott*, 191 U. S., 225, and *Bache* v. *Hunt*, 193 U. S., 523. In the Fore River

Shipbuilding case the question was whether the United States Circuit Court had jurisdiction to entertain a suit under the Employers' Liability Act of Massachusetts, and the court, in dismissing the appeal, said:

> "Thus having jurisdiction, it was at liberty to decide all questions properly before it, including the one whether, under the applicable principles of law, a court of another sovereignty would enforce a cause of action based upon the Massachusetts statute. But the determination of that question did not involve the jurisdiction of the Circuit Court as a Federal Court. It was a question to be decided upon the application of the same principles as would apply had the action been brought in a court of another state or nation. * * * It was general in its nature and to be determined upon principles controlling in other courts as well as those of Federal creation."

The jurisdiction referred to in the Act "must be one involving the jurisdiction of the Circuit Court as a Federal Court, and not simply its general authority as a judicial tribunal to proceed in harmony with the established rule of practice governing courts of concurrent jurisdiction as between each other" (*Louisville Trust Co.* v. *Knott*, 191 U. S., 225, 233); or as is said in another case, this right of direct appeal is limited "to cases where the jurisdiction of the Federal Court as a Federal Court is put in issue, and that questions of jurisdiction applicable to the state courts as well as to the Federal Courts are not within its scope." (*Board of Trade* v. *Hammond Elevator Co.*, 198 U. S., 424, 432.) It is likewise well settled that questions involving the power of the court as a court of

equity are not questions of jurisdiction within the meaning of the statute. *Smith* v. *McKay*, 161 U. S., 355; *Blythe* v. *Hinckley*, 173 U. S., 501.

The present case involves only a controversy as to the control of the property and assets of the American Guaranty Company between the receiver appointed by the United States Circuit Court and the receiver appointed nearly eight months thereafter by the West Virginia State Court. While this Court has held that a controversy as to whether the Circuit Court or District Court has acquired jurisdiction over a defendant because of alleged invalidity of the service of process upon the defendant is a question of jurisdiction within the meaning of the act and appealable to this Court, the present does not come within such line of cases.

The intervening petition of the appellant Keatley, filed in the United States Circuit Court, was expressly based upon the ground that, under the construction placed upon the statutes of West Virginia by the intervening petitioner, the decree of dissolution of the defendant, American Guaranty Company, entered by the State Court of West Virginia on February 1, 1909, vested the entire property of the Company in a receiver appointed by that court and prevented said Company, by its officers or directors, from in any way thereafter participating in any court proceeding. This, too, in spite of the fact that the West Virginia Court was not required by the statute (Sec. 58) to appoint a receiver, and in fact did appoint a receiver whose jurisdiction was expressly limited to that state. (Rec., 53.)

The question involves the construction of Sections 57, 58 and 59 of the corporation act of West Virginia, heretofore quoted (Brief, pp. 5-7). Section 57 gives to the State Courts power to dissolve corporations upon bill of complaint filed in those courts. Section 58 provides that

> "When a corporation expires, or is dissolved, or before its expiration or dissolution, upon sufficient cause being shown therefor, such court as is mentioned in the preceding section *may,* on application of a creditor or stockholder, appoint one or more persons to be receivers to take charge of and administer its assets; *and whether such receiver be appointed or not,* may make such orders and decrees, and award such injunctions in the cause, as justice and equity may require."

Under the statute it was not necessary that a receiver should be appointed by the West Virginia court.

Section 59 provides in part that after a decree of dissolution has been entered

> "suits may be *brought, continued or defended,* the property real and personal of the corporation to be conveyed or transferred under the common seal, or otherwise, and all lawful acts be done in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto."

The intervening petitioner Keatley claimed (Rec., 134) that after a decree of dissolution had been entered in the State Court of West Virginia, February 1, 1909, the appearance of the corporation could not, under Section 59 of the statute above quoted, be entered in a proceeding brought in the United States Circuit Court at Chicago on February 2, 1909, for the very purpose of collecting and distributing the assets and property of the Company. This is a question of general law and construction of the West Virginia statute. And so Judge Kohlsaat held, as his opinion shows. (Rec., 280.) The corporation entered its appearance in the suit in the United States Circuit Court and no question is involved of the proper service of process or the validity of any service of process. The intervening petition of Keatley prayed that upon the filing of said intervening petition

> "after proper answer the issues framed may be heard in this honorable court and finally determined and that the order and decree of this honorable court be made and entered, as the *rules of equity* shall require."

And the intervening petitioner further moved that the property and assets of the Guaranty Company be transferred from the Federal receiver to him as the State court receiver, which petition and motion were both denied. (Rec., 287.) The questions raised by the intervening petitioner would apply to any State court as well as to a Federal court, if the present suit had been started in a State court; they are not questions which affect the jurisdiction of the Circuit Court as a Federal Court.

This is clear from the allegations of the intervening petition:

> "That the said defendant corporation upon dissolution as hereinbefore mentioned, under the laws of West Virginia, the state of the creation of said defendant, could only finish its business, conserve and marshal its assets, pay and discharge its lawful indebtedness, and distribute and dispose of its surplus funds, if any, by and through the direction, orders, judgments and decrees of said Circuit Court of Kanawha County, West Virginia, and that any attempt so to do, or any interference with the property, business or assets of said defendant corporation, *by any other court wherever situate, except ancillary to and upon the request and authority of said court of original jurisdiction,* would be wholly unwarranted and without competent jurisdiction, and all the acts, orders, directions, judgments and decrees of such other court, and all its proceedings, would in that respect be *coram non judice* and without right." (Rec., 134.)

It nowhere appears from the record that the jurisdiction of the Circuit Court as a Federal Court was challenged, nor that any issue was raised which would not be applicable to a like bill filed in any court of equitable jurisdiction, State or Federal. The matter involved a contest over the possession of the property of the Guaranty Company between a receiver appointed by the Federal Court and a receiver subsequently appointed by the Circuit Court of Kanawha County, West Virginia. A somewhat similar case is *Louisville Trust Company* v. *Knott*, 191 U. S., 225 (1903). That case arose out of the conflicting claims of the United States

Circuit Court for the Western District of Kentucky and the State Circuit Court of Jefferson County, Kentucky, as to the right to administer the property and affairs of the Evening Post Company, a Kentucky corporation. The Federal Court, having possession by its receiver of the property of that company, declined to surrender possession to the Louisville Trust Company, the receiver appointed by the State Court, and from a final order dismissing the intervening petition of the Louisville Trust Company asking for surrender of the possession, a direct appeal was taken to this Court. The lower court there certified that it had held that its jurisdiction over the trust estate was prior and exclusive to that of the State Court. This Court held that the question presented by the certificate of the Circuit Court was not one of jurisdiction within the meaning of the Act, saying (p. 232):

> "The issue presented by the intervening petition did not raise any question under the Constitution or statutes of the United States, and depended only upon principles of general law applicable to all courts having concurrent jurisdiction over the same subject matter. We repeat that the jurisdiction of the Circuit Court was not, and is not, questioned for want of power in that court, as a Federal tribunal, to take possession of the assets and property of the Post Company; only its authority, upon principles of equity and comity, to do that of which complaint was made by the Louisville Trust Company. We do not think that Congress intended that any such question should be the basis of a direct appeal to this court from a Circuit Court."

And this Court, upon motion, in that case dismissed the appeal. We submit that the present case is embraced within the principle of the Louisville Trust Company case. The receiver first appointed by the West Virginia court on February 1, 1909, was specifically limited in power *solely* to the State of West Virginia by the express order of the court (Rec., 53), and the receiver appointed by the Federal Court on February 2, 1909, upon the appearance and consent of the corporation, was of all of the property of every description of the Guaranty Company. (Rec., 57-8.) The corporation was expressly authorized to appear by the very words of Section 59 of the West Virginia corporation act, and the United States Circuit Court had full power over all property and assets of the Company. (Rec., 57.) The points raised by the intervenors in the present case as to whether the West Virginia receiver or the officers of the Company were the proper persons to enter the appearance in the United States Circuit Court of the dissolved corporation, do not involve any question of jurisdiction of the United States Circuit Court; the same question could and would have been raised if receiver Potter had been appointed by a State court in Illinois. Here, as in the Louisville Trust case, there is a contest between a Federal and a State court receiver. The West Virginia receiver, with powers as to property located *without* the State of West Virginia, was appointed by the State Court on September 22, 1909, long after the appointment on February 2, 1909, of the Federal Court receiver, and long after the property of the Guaranty Company

had been in the possession of, and was being administered upon by, the Federal receiver.

In *Bache* v. *Hunt*, 193 U. S., 523 (1904), Hunt as receiver filed an intervening petition in a foreclosure suit pending in the Circuit Court for the reimbursement of certain amounts paid by him as receiver in the extinguishment of prior claims that certain railroad stock and bonds had been deposited to secure. A decree was made in his favor and an appeal taken direct to this Court. Upon motion to dismiss the appeal, which was granted, it was held that:

> "The jurisdiction of the Circuit Court was only questioned in respect of its general authority as a judicial tribunal and not in respect of its power as a court of the United States. The established rules of practice as to bringing in parties to ancillary or *pro interesse suo* proceedings, and those governing courts of concurrent jurisdiction as between themselves, were alone involved."

In *Courtney* v. *Pradt*, 196 U. S., 89 (1905), it appeared that a citizen of Wisconsin, duly qualified as an executor in that state, was sued, as such executor, in the state courts in Kentucky. Pradt demurred on the ground that the court had no jurisdiction and the Circuit Court of the United States to which the case had been removed, sustained the demurrer and dismissed the suit on the ground that there was no jurisdiction in the courts of Kentucky in the suit against a foreign executor. This Court held that Circuit Courts have power to so adjudicate, and that the question decided was not one of the jurisdiction of the Circuit Court of the

United States, as a Federal Court, but one with respect to the laws of Kentucky, and dismissed the appeal. The court there said:

> "It is settled that the question of jurisdiction thus to be certified is the jurisdiction of the Circuit Court as a court of the United States, and not in respect of its general authority as a judicial tribunal."

In the present case, the intervening petitioner Keatley alleged in his petition that "where a receiver of the said dissolved corporation is appointed for the purpose of winding up the corporate business and affairs, the officers of said corporation are absolutely deprived of all authority to act, except as directed by said court or requested by the said receiver." (Rec., 133.)

The question thus raised by the intervenor relates, therefore, to the construction of the West Virginia statutes as to whether the officers of the dissolved corporation or the receiver of the State court should have entered the appearance of the Guaranty Company in the Federal Court. The question decided was with respect to general law and the laws of West Virginia and not with respect to the jurisdiction of the Circuit Court as a Federal Court.

If it should be contended by appellant that the present case comes within the ruling in *Board of Trade* v. *Hammond Elevator Co.*, 198 U. S., 424 (1905), where it was held that questions as to the validity of the *service of process* in a Federal Court are questions of jurisdiction, justifying a direct appeal the answer is as we have already argued, that the present case does not involve any

question as to the service or the validity of the service of any process upon the defendant, Guaranty Company. Its appearance and answer were entered and filed within the express authority of the statutes of West Virginia.

But more than all this, the resolution passed by the Executive Committee of the Guaranty Company January 30, 1909 (one day before the appointment of the first West Virginia receiver and two days before the appointment of the Federal receiver) directed:

> "That Messrs. Gorham & Wales, Attorneys of Chicago, Illinois, be and they are hereby retained, requested and directed to enter the appearance of said Company (Guaranty Company) in any proceedings that may be instituted in any court, State or Federal, sitting in Chicago, Illinois, and in such proceedings to consent to the appointment of a receiver or receivers to take charge of and administer the assets of said Company," etc. (Rec., 218.)

Pursuant to that resolution, the Guaranty Company, on February 2, 1909 (Rec., 56), filed its appearance and consented to the appointment by the United States Circuit Court of Receiver Potter. That appearance and consent was signed by the Guaranty Company, by its President (Frederick M. Steele) attested by its Secretary under its corporate seal, and also by "Gorham & Wales, its Solicitors." (Rec., 56.) The resolution authorized Messrs. Gorham & Wales to enter the appearance of their client (the Guaranty Company) "in any proceedings that may be instituted in any court, State or Federal, sitting in Chicago," etc. (Rec., 218.) If those

attorneys had entered the appearance of their client to a bill precisely like the present one, but filed in the State rather than in the Federal Court, the question of the power of those attorneys, as well as of the president and secretary, to sign the name of the Guaranty Company to the appearance and consent, would have been one of general law, to be passed upon and determined by the State court. The fact that the appearance and consent were filed in the Federal Court does not change the rule. The question is one of general law and is in no way dependent on the particular jurisdiction of the United States Circuit Court as a Federal Court.

We respectfully urge that the motion of the appellee to dismiss the appeal herein should be granted. The inventory filed by the receiver in the Federal Court on March 26, 1909, shows assets in his possession amounting, in cash and securities, to over $1,400,000. (Rec., 263.) Seven thousand two hundred and nineteen claimants have filed proofs of claims with the Master in Chancery to whom the matter was referred by the Federal Court. (Rec., 223.) Only forty-eight contract-holders reside in West Virginia. These forty-eight contracts have a cash surrender value of not to exceed $9,751.44. (Rec., 28.) In fact a specific exhibit shows that there are only thirty-five contract-holders residing in West Virginia. (Rec., 172.) Edwin M. Keatley was appointed receiver in the West Virginia State Court on September 22, 1909. (Rec., 179.) He was appointed such receiver upon the petition of W. R. Gilliam, filed in the West Virginia State Court on September 22,

1909. (Rec., 183.) W. R. Gilliam resides in St. Paul. (Rec., 184.) He, therefore, can have no interest, such as a West Virginia claimant might feign, in endeavoring to have the estate of the Guaranty Company administered upon in the West Virginia courts. Furthermore, W. R. Gilliam, at the time he filed his intervening petition in the West Virginia court, had already submitted to the jurisdiction of the United States Circuit Court at Chicago; he had theretofore filed with the Federal Master in Chancery (James S. Hopkins) his (Gilliam's) claims; and those claims were filed on August 24 and 28, and September 1, 1909 (Rec., 237); and the principal of those claims is for alleged damages for an alleged breach of "an alleged renewal agency commission contract." (Rec., 237.)

The creditors are pressing for their distributive shares of the estate and are in need of their dividends. There is a large amount of assets in the hands of the Federal Court receiver awaiting distribution.

What legal or equitable benefit can it be to Mr. Gilliam, of St. Paul, or to the creditors generally, that this estate should be taken bodily from the Federal Court at Chicago and removed into the State Court in West Virginia, merely for purposes of distribution? In the language of the United States Circuit Court (Judge Kohlsaat) (Rec., 286):

> "The claim that the jurisdiction of this court was in any manner affected by the (subsequent) September order of the West Virginia court does not appeal to me as well founded. Nor is it clear how the creditors and stockholders can

> be injured by the administration. * * * Feeling, as I do, that to grant the motion of the petitioner would be unjust to them (creditors and stockholders), and seeing no reasons why any complications should result, I am of the opinion that the prayer of the intervening petitioner should be and it is denied."

In some of its aspects this case is not unlike *In re Cleland*, 218 U. S., 120, decided May 31, 1910; in which this Court said:

> "It cannot be believed the motive for the petition is such as to appeal to the discretion of the court."

We respectfully suggest that it would work hardship to postpone the disposition of this matter until the case is reached in regular order on the calendar, and we therefore pray for a present consideration of this motion, and that the appeal should be dismissed.

Respectfully submitted,

LEVY MAYER,
Attorney for Edwin A. Potter, Receiver.

CHICAGO, March 4, 1911.

KEATLEY, AS RECEIVER OF AMERICAN GUARANTY COMPANY, *v.* FUREY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 84. Argued December 12, 1912.—Decided December 23, 1912.

In order to warrant a direct appeal to this court under § 5 of the Court of Appeals Act of 1891, the jurisdiction of the Federal court as such must be involved.

Whether title to the assets outside the State passed to a receiver of a corporation under an order of the court in the State of organization depends upon the law of that State, and a decision by a Federal court in another State having custody of assets through a receiver that no title passed and dismissing a petition of the first named receiver to intervene, does not involve the question of jurisdiction of the Federal court and warrant a direct appeal to this court.

In such a case the judge denying the petition to intervene is right in certifying that no question of jurisdiction exists.

In such a case the Federal court has jurisdiction over the intervention whether it has jurisdiction as a Federal court of the principal case or not; and until final decree in the principal case the question of jurisdiction is not open.

THE facts, which involve questions of jurisdiction of the Federal court, are stated in the opinion.

Mr. F. W. Houghton and *Mr. W. E. Chilton*, with whom *Mr. George B. Edgerton* and *Mr. Thomas H. Gill* were on the brief, for appellant:

The motion to dismiss should be denied because the record clearly shows that the sole question decided by the court below was a single definite question of jurisdiction; it also clearly appears from the petition for appeal and the order granting it, that this appeal was taken to the Supreme Court to review the question of jurisdiction alone and hence is sufficient without a certificate. *Davis*

v. *C., C., C. & St. L. R. Co.*, 217 U. S. 157; *Re Jefferson*, 215 U. S. 130; *Excelsior W. P. Co.* v. *Pac. Bridge Co.*, 185 U. S. 282; *Shields* v. *Coleman*, 157 U. S. 168; *Re Lehigh Min. & Mfg. Co.*, 156 U. S. 322; *Huntington* v. *Laidley*, 176 U. S. 668; *Interior Const. Co.* v. *Gibney*, 160 U. S. 217; *Smith* v. *McKay*, 161 U. S. 355.

The record clearly shows that the sole question decided by the court below was one of jurisdiction and no certificate is in such case required. Cases *supra* and *United States* v. *Larkin*, 208 U. S. 333, 338; *Chicago* v. *Mills*, 204 U. S. 321; *Petri* v. *Creelman Lumber Co.*, 199 U. S. 487; *Harkrader* v. *Wadley*, 172 U. S. 148.

The jurisdiction of the Circuit Court as a Federal court was involved in this controversy because no lawful voluntary general appearance by the defendant was or could be made therein; and because of the failure to lawfully serve the defendant with any process. Cases *supra*, and *Shepard* v. *Adams*, 168 U. S. 618; *Kendall* v. *Amer. Automatic Loom Co.*, 198 U. S. 477; *Board of Trade* v. *Hammond*, 198 U. S. 424.

The entire controversy in the court below was whether or not the decree of dissolution of the American Guaranty Company of Chicago and the appointment of Receiver Black of the assets of such corporation within the jurisdiction of such court under the provisions of §§ 57, 58 and 59, Chap. 53, Code of West Virginia, 3d ed., p. 510, so ended the life and power of such corporation and its officers that it could not thereafter by such officers or attorneys enter a general appearance in the Federal court so as to give such court jurisdiction in such action. Alderson on Receivers, pp. 4, 19, 20, 79, 80, 276, 277, 387, 523; *White* v. *White*, 130 California, 597; Clark & Marshall on Private Corp., § 319, pp. 912, 913; *Conklin* v. *Shipbuilding Co.*, 140 Fed. Rep. 219; *American Nat'l Bank* v. *Nat'l Benefit Co.*, 70 Fed. Rep. 420; *Pendleton* v. *Russell*, 144 U. S. 640; *United States* v. *Larkin*, 208 U. S. 333, 338, *Chicago* v.

Mills, 204 U. S. 321; *Petri* v. *Creelman Lumber Co.*, 199 U. S. 487; *Harkrader* v. *Wadley*, 172 U. S. 148.

Mr. Levy Mayer for appellees:

This appeal should be dismissed because no certificate of jurisdiction was obtained from the Circuit Court and no equivalent of a certificate of jurisdiction is shown by the record. *Courtney* v. *Pradt*, 196 U. S. 89; *Filhiol* v. *Torney*, 194 U. S. 356; *Chappell* v. *United States*, 160 U. S. 507; *The Bayonne*, 159 U. S. 687, 693; *Shields* v. *Coleman*, 157 U. S. 168, 176.

The jurisdiction of the Circuit Court as a Federal court was not involved within the meaning of the act allowing a direct appeal to this court. The subject-matter was a controversy as to the possession of the property of a corporation, between a receiver appointed by the Federal court and a receiver subsequently appointed by a state court, and involved the construction of the West Virginia statutes, and a question of general law. *Fore River Ship Building Co.* v. *Hagg*, 219 U. S. 175; *Louisville Trust Co.* v. *Knott*, 191 U. S. 225; *Courtney* v. *Pradt*, 196 U. S. 89; *Bache* v. *Hunt*, 193 U. S. 523; *Board of Trade* v. *Hammond Elevator Co.*, 198 U. S. 424; *Schweer* v. *Brown*, 195 U. S. 171.

The receiver appointed in the West Virginia dissolution proceedings was not a statutory receiver, but was a mere chancery act receiver, and as such he was not invested by statute with the title to the property of the corporation that had been dissolved or made the legal successor of such corporation.

Mr. Justice Holmes delivered the opinion of the court.

This is an appeal from the Circuit Court taken by an intervenor on the ground that the court never had ob-

tained jurisdiction over the defendant. The petition to intervene was dismissed, the decree declaring that the court had jurisdiction, that there was no equity in the petition and that the petitioner was not entitled to any of the relief prayed for. The court allowed the appeal but certified that in its opinion no question of jurisdiction was involved. The appellant contends that the contrary appears on the face of the record. *United States* v. *Larkin*, 208 U. S. 333. *The Steamship Jefferson*, 215 U. S. 130, 137. *Herndon-Carter Co.* v. *James N. Norris, Son & Co.*, 224 U. S. 496.

The material facts are these. On February 1, 1909, there was filed in a local court of West Virginia a bill for the dissolution of the American Guaranty Company, a corporation of that State. The corporation appeared and consented and on the same day a decree was entered dissolving the corporation, appointing a receiver to whom Keatley is successor, and directing him to take the steps necessary to secure possession of the company's property within the jurisdiction of the court. By the charter of the company its principal office was to be in Chicago, and in fact its bank deposits, bonds, &c., were almost wholly there. On February 2, the suit now before this court was brought in the Circuit Court of the United States for the Northern District of Illinois on the ground that the West Virginia receiver had no authority outside of his State, praying for a receiver and the distribution of the assets collected. There was an appearance and consent in the name of the corporation, a receiver was appointed and he proceeded to collect the assets. It is stated by the judge in his opinion that more than 7000 out of the 7030 claims against the company had been presented in the cause. On October 27, 1909, the West Virginia receiver filed his petition of intervention, setting up that the corporation, having been dissolved, could not appear in the suit.

Whether the exception to the general rule concerning jurisdiction of appeals like this established by *Shepard* v. *Adams*, 168 U. S. 618, and *Board of Trade* v. *Hammond Elevator Co.*, 198 U. S. 424, applies to the present case, and what may be the merits of the argument against the right to appear in the name of the corporation, if the question is open, cannot be considered until the petitioner's right to present that argument is made out. On that matter we will assume that, if the petitioner had a case below, the denial of the right to intervene was not a discretionary decision and final on that ground. *Credits Commutation Co.* v. *United States*, 177 U. S. 311, 315, 316. But of course the petitioner's standing in the lower court depended on his having title, and was not a consequence of his West Virginia appointment alone unless at least he got a title by virtue of it, as it was provided by statute in express terms that the receiver should, in *Relfe* v. *Rundle*, 103 U. S. 222. See *Great Western Mining Co.* v. *Harris*, 198 U. S. 561, 574. The effect of such a provision need not be considered in this case. In some instances, at least, it would be enforced outside of the State. *Bernheimer* v. *Converse*, 206 U. S. 516, 534. *Converse* v. *Minnesota Thresher Manufacturing Co.*, 212 U. S. 567. *Converse* v. *Hamilton*, 224 U. S. 243, 257. See *Chipman* v. *Manufacturers' Nat. Bank*, 156 Massachusetts, 147, 148, 149. *Haskell* v. *Merrill*, 179 Massachusetts, 120, 124. The statute of West Virginia on the other hand provides for the appointment of receivers to 'take charge of and administer' the assets, and for the bringing of suit and the conveyance of property in the corporate name thereafter. Code, ch. 53, §§ 58, 59. It seems, to be sure, that in September and October the local West Virginia court purported to authorize and confirm a deed by a special commissioner to the receiver, but if the statute did not itself constitute the receiver the universal successor of the corporation, see *Chipman* v. *Manufacturers' Nat. Bank*, 156

Massachusetts, 147, 148, 149, it may be doubted whether the deed had extraterritorial effect. See *Fall* v. *Eastin*, 215 U. S. 1. The argument is strong to support the judgment of the court below that no title passed.

Right or wrong that was the decision of the Circuit Court, and it is obvious that a dismissal of the petition on that ground does not warrant a direct appeal, whether the court had jurisdiction or not. The court had jurisdiction over the intervention and decided against it on the merits. That question logically and chronologically preceded any question of jurisdiction in the principal case. The question of jurisdiction in the principal case was not yet open, as there had been no final decree therein, and as by virtue of the decision that the intervenor had no standing, the question could not be raised by him. The form of the decree really made it impossible for this appeal to be entertained, but we have discussed the case and stated the facts more at length in order to explain that the judge was right in his certificate and could not have acted otherwise upon his view of the West Virginia law.

Appeal dismissed.